THE GROWTH

OF

AMERICAN NATIONALITY.

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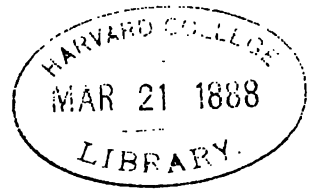
An Introduction to the Constitutional History of the United States,

BY

ALBION W. SMALL.

WATERVILLE:
PRINTED FOR THE USE OF STUDENTS IN
COLBY UNIVERSITY.
1888.



PREFACE.

This compilation is the basis for the work of a single term. The aim of the instruction is not to cram the students with the greatest possible number of facts about American history, but to show first how to obtain facts, and second how to use them.

The mere readers of histories often, if not always, imagine that history is deposited somewhere in the form of tableau, antithesis or period, so that, if his patience would endure, any day laborer might quarry himself the reputation of a Carlyle, or a Macaulay, or a Gibbon. It is hoped that the students who take this course will conclude, from experience with a few historical deposits, that history rewards only the laborer who is at once miner and seer.

New England students of the present generation, with rare exceptions, bring to the study of American history the almost impregnable prejudice that our Nationality was related to our Independence as was Athene to Zeus. The more obvious and immediate object of this course is to show that the one myth is as fabulous as the other.

To possible inquiries why so many or so few documents have been included in the outline, the answer is, those

and those only are included which classes have been able to examine cursorily in the allotted time.

The method adopted, viz: topical study, accounts for the fragmentary character of the outline.

A. W. S.

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PART I. THE COLONIAL PERIOD.

INTRODUCTION.

FUNDAMENTAL PRINCIPLES OF AMERICAN HISTORY.

(Dr. A. B. Hart).

1. *No* nation has a history *disconnected* from that of the rest of the world: the United States is closely related, in point of time with previous ages; in point of space with other civilized countries.

2. Institutions are a *growth*, and not a creation: the Constitution of the United States itself is constantly changing with the changes of public opinion.

3. Our institutions are *Teutonic in origin*; they have come to us through English institutions.

4. The growth of our institutions has been from *local to central*: the general government can, therefore, be understood only in the light of the early history of the country.

5. *The principle of union is of slow growth* in America; the Constitution was formed from necessity not from preference.

6. *Under a federal form of government* there must inevitably be a perpetual contest of authority between the states and the general government: hence the two opposing doctrines of States'-rights and Nationality.

7. *National political parties* naturally appeal to the *federal* principle when they are in power, and to the *local* principle when they are out of power.

8. When parties become distinctly sectional, *a trial of strength* between a part of the States and the general government must come sooner or later.

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Even before England had begun her arbitrary course with the colonies, they had felt the need of a political bond. They were individually weak, and exposed to inroads by the Indians. In 1643, part of the New England colonies—Massachusetts, Connecticut, Plymouth and New Haven—formed the *New England Confederation* which lasted for forty years. To it were delegated certain few powers and privileges for the general welfare and protection. It accomplished some good by bringing the colonies in it into closer relationship, and securing to them better protection than they would have enjoyed without it. But it was, after all, only a Confederation.

The sentiment in favor of a general union of the colonies grew stronger as it became evident that England would not desist from her arbitrary course. *In* 1754 *a convention was held at Albany, and Franklin submitted a plan of union* which provided for a *Confederation* with an elective head. It was then felt that the union would be wise and beneficial, but not absolutely necessary. Franklin's plan was therefore rejected, after it had been considered at length. It did not please the mother country, and each colony was so anxious to preserve its individuality that it was unwilling to make concessions to the other. The pressure of circumstances which called them together, was not strong enough to unite them into a single body.

In 1765 *a convention of delegates from nine colonies met and asserted, in a bill of rights, the exclusive right of the colonies to tax themselves.*

At last the colonies resolved upon more vigorous action, and *in* 1774 *chose the first* "*Continental Congress,*" with a view to a calm and full consideration of their rights and duties. It met September 5th, and sat until October 26th, and decided on three measures, viz: (1) a non-exportation agreement; (2) an address to the people of Great Britain, and a memorial to the inhabitants of British America; and (3) a loyal address to the King.

It is clear that this body did not have the character of a *government.* It could only formulate the supposed opinions of the bodies represented by the members. In its declaration of rights it appealed to the *laws of nature,* and the principles of the British Constitution, thus combining the speculative and historical grounds of American liberty.

CHAPTER III.

THE POLITICAL CRISIS IN THE COLONIES.

The action of the first *Continental Congress* obtained no concessions from England. On the contrary, the British Government pushed its arbitrary measures with more vigor than ever. The acts of the Royal

Governor in Massachusetts had forced the colonists to drop the forms of Charter Government and to proceed on their own responsibility.

Some of the more important events of the next year were the following:—

Apr. 19,	(1775)	Battles of Concord and Lexington.
May 10,	"	Ethan Allen and his "Green Mountain Boys" capture Ticonderoga, the key to the route from the Canadas to the lower provinces. Crown Point taken later.
June 15,	"	Washington elected Commander-in-Chief.
June 17,	"	Battle of Bunker Hill.
July 3,	"	Washington takes command of the army.
Sep.—Dec.	"	Expedition of Arnold, via Kennebec, to Quebec.

Late in the year 1775 King George hired troops from German princes, and shipped them to America. The petty despots of the continent had, at this time, power to sell the lives and services of their subjects wherever they could find a market for them. To reconcile the unwilling conscripts to their exportation, promises of plunder were freely held out to them. These thousands of German troops were called Hessians from the state (Hesse-Cassel) which supplied the greater number. Lord Chatham, representing a minority, denounced the employment of these mercenaries as a measure which ought to irritate the colonists to "incurable resentment."

Meanwhile, the second *Continental Congress* had convened (May 10, 1775.) Some of the delegates were chosen by the popular branch of the colonial legislatures, but the majority had been elected by conventions of the people.

"The credentials of the delegates, while they conferred authority to adopt measures to recover and establish American rights, still expressed, in many instances, a desire for the restoration of harmony between Great Britain and her colonies. In some cases, however, this desire was not expressed, but a naked authority was granted to consent and agree to all such measures as the Congress should deem necessary and effectual to obtain a redress of American grievances." (Curtis, I. 29.)

The circumstances under which this second Congress met, caused it to assume the powers of a *provisional* or *revolutionary government*, and made it the organ of common resistance to the mother country.

The leading governmental acts to this Congress were:—

A. The assumption of general control of military operations.
B. The creation of a continental or national army.
C. The appointment of a commander-in-chief and other officers.
D. The creation of a continental currency.
E. The authorizing of reprisals by public and private armed vessels.
F. The establishment of a general Treasury and Post Office.

But all these acts were of relatively minor importance. For many months the minds of the colonists had been drawn to the thought of a *separation* from Great Britain. Up to the year 1776, America, knowing the fearful struggle it would involve, and moved by a sentiment of attachment to the mother country, had hesitated to take this momentous

step. But now, the English Parliament had denounced the colonists as rebels, and had sent out armies to crush them. The last strong tie of sympathy was severed, and on the 7th of June, 1776, Richard Henry Lee, of Virginia, offered in Congress the following resolution :—

"That these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British Crown; and that all political connection between them and the state of Great Britain, is, and ought to be, totally dissolved."

This resolution was debated till July 2nd, when it was passed. Meanwhile a committee, of which Thomas Jefferson was chairman, had been instructed to prepare a draft of a declaration of independence. The document submitted by that committee was accepted, with slight alterations, signed, and given to the world July 4th.
(vid Curtis: History of the Constitution of the U. S. vol. I. p. 81 sq.)

CHAPTER IV.

THE DECLARATION OF INDEPENDENCE.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident :—That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that government long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance

of these Colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature,—a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise, the State remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose, obstructing the laws for naturalization of foreigners, refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation,—

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the powers of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the Representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these Colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the

state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And, for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

CHAPTER V.

THE POLITICAL SITUATION AFTER THE DECLARATION OF INDEPENDENCE.

The issues of the period can nowhere be so conveniently reviewed as in the instrument itself. Mr. Pickering said, and John Adams admitted, that "*there is not an idea in it but what had been hackneyed in Congress for two years before.*"

(vid. Declaration of Independence.)

Not only as a statement of historical fact, but as a commentary upon subsequent controversy, it is necessary to define with care the political situation following the adoption of the above. The truth appears to be:—

The Declaration of Independence was a revolutionary act, participated in by all the colonies either through competent delegates, or by subsequent popular ratification. This act severed all the bonds which had bound the colonies to England. Revolution, in itself, *is only destructive.* Until *evolution* has substituted new institutions for old ones, the relations which the abrogated system controlled are lawless. The laws governing the colony of Virginia, for example, up to 1776, had been made either by the King or Parliament of England or by the colonial government of Virginia. No person in any other American colony had any share, directly or indirectly, in legislating for Virginia any more than if he had been a British subject in Australia or India. The people of Massachusetts or any other of the twelve colonies could not acquire a share in the government of Virginia until the people of Virginia voluntarily and explicitly resigned themselves to such new government. No such transfer of allegiance occurred.

It would seem to be easy, therefore, to answer the question which afterwards arose: viz: "What are the reciprocal relations of the Colonies?" The political relations existing in the Colonies *after* the Declaration were simply those which had existed *before* that act, *minus* those which the Declaration sundered. In other words there remained *no* inter-colonial bonds of a legal or political nature. The people in revolt

possessed no organic law. In each colony, that alone was law which people termed their "charter liberties," *i. e.* the principles and details of law guaranteed in their charters, to the people of each separate colony, and enacted in pursuance thereof by their several Legislatures.

(For clear recognition of this fact, cf. Supreme Court Report, Ware vs. Hylton. III. Dallas, 199. C. J. Marshall, in Gibbon vs. Ogden. (Feb. 1824) 9 Wheaton, I. 240. Senator Geo. F. Edmunds, in N. A. Rev. Oct. 1881, "The State and the Nation.")

In what sense then can it be said that the Declaration of Independence was the act of a "*united people?*" Manifestly *not in the sense that they were an organized body politic.* All the literature of the period proves that the *question of the permanent relations of the colonies to each other* was not yet a clear, distinct and prominent issue, and that no doctrine concerning it had then divided the people into parties. But the same literature shows that, so far as the people had legislated on the matter at all, their legal enactments presupposed the political *independence* of each colony, and allegiance of individuals was held to be due only to the colony—or "State," as each now began to term itself.

For instance, Article XIV. of the Virginia "Bill of Rights" (June 12th, 1776,) is as follows:—"That the people have a right to uniform government; and therefore, that *no government separated from, or independent of the government of Virginia ought to be erected or established within the limits thereof.*"

The unity of the colonies then was a unity of *sympathy* as touching one thing, and not of *organization.* In race and language the colonists were substantially one people; their economic interests counselled union; geographical position pointed to union as natural; in fundamental religions and political ideas the people were in essential agreement; in short, all the necessary elements of nationality were present except the ***legal*** element. Besides all this, external force, formidable to all alike, threatened to annihilate the liberties of each colony in turn, if all were not united in common resistance. The good sense of the people accordingly united them against the immediate danger from Great Britain, but none of the colonies conceded that their independent sovereignty was at all compromised by this voluntary union. Undoubtedly the people *ought* to have recognized the abundant reasons for adopting a national organization, but they did not do so, and the fact remained that so far as interstate law and jurisdiction were concerned, the different commonwealths were as independent of each other as are Ireland and the Transvaal to-day.

The United States were "a collection of thirteen feeble republics on the eastern coast of North America, inflicting upon each other the manifold injuries of rival and hostile legislation." (Curtis.)

State pride, interest and influence began to be felt plainly and powerfully in general councils. Local feelings threatened to become influential enough to undo the work of the revolutionary heroes, by leaving the country divided among thirteen individually powerless governments. The people soon realized that no *law* existed to compel them to go be-

yond state lines in the recognition of authority. Each colony might have made the attempt to maintain itself as an independent sovereignty. Large numbers of politicians in nearly every one of the states, were more or less disposed to hazard the experiment. It was only after the states had suffered the humiliations and disasters of anarchy that they realized the impossibility of government by a powerless committee. The perception of this truth marks the end of the first period in our constitutional growth. The people of the several colonies recognized the need of a more practicable plan of co-operation.

PART II. PERIOD OF THE CONFEDERATION.

(Based on Curtis' History of the Constitution.)

Division I—From 1781 to Peace with Great Britain, 1783.

CHAPTER I.

THE FORMATION AND CHARACTER OF THE CONFEDERATION.

With a view to the organization of an efficient system, the colonies entered into a compact with each other for offensive and defensive purposes.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION BETWEEN THE STATES.

To all to whom these Presents shall come, we the Undersigned Delegates of the States affixed to our names, send Greeting: —Whereas, the Delegates of the United States of America in Congress assembled, did on the 15th day of November, in the year of our Lord 1777, and in the Second Year of the Independence of America, agree to certain Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts-bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, viz.: —

Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts-bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE I.—The style of this Confederacy shall be, "The United States of America."

ARTICLE II.—Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled.

ARTICLE III.—The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ARTICLE IV.—The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction shall be laid by any State on the property of the United States or either of them. If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State shall flee from justice and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence. Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ARTICLE V.—For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the Legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year. No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office

under the United States for which he, or another for his benefit, receives any salary, fees, or emolument of any kind. Each State shall maintain its own delegates in any meeting of the States and while they act as members of the Committee of the States. In determining questions in the United States in Congress assembled, each State shall have one vote. Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonment during the time of their going to and from, and attendance on, Congress, except for treason, felony, or breach of the peace.

ARTICLE VI.—No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defence of such State or its trade, nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use in public stores a due number of field-pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regula-

tions as shall be established by the United States, in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

ARTICLE VII.—When land forces are raised by any State for the common defence, all officers of or under the rank of Colonel shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ARTICLE VIII.—All charges of war, and all other expenses that shall be incurred for the common defence, or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied *by the authority and direction of the Legislatures of the several States*, within the time agreed upon by the United States, in Congress assembled.

ARTICLE IX.—The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth Article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatever; of establishing rules for deciding, in all cases, what captures on land and water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States, in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in ques-

tion, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State; and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States, fixing the standard of weights and measures throughout the United States;

regulating the trade and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated, "A Committee of the States," and to consist of one delegate from each State, and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting *every half year to the respective States* an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to *make requisitions* from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the *Legislature of each State* shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner at the expense of the United States; and the officers and men so clothed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of such State, unless the *legislature of such State shall judge that such extra number can not be safely spared out of the same*, in which case they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

The United States, in Congress assembled, shall never engage in a war nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the

defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on any question, shall be entered on the journal when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal except such parts as are above excepted, to lay before the Legislatures of the several States.

ARTICLE X.—The Committee of the States, or any nine of them, shall be authorized to execute in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ARTICLE XI.—Canada, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ARTICLE XII.—All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ARTICLE XIII.—Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

AND WHEREAS it hath pleased the great Governor of the world to incline the hearts of the Legislatures we respectively represent in Con-

gress to approve of, and to authorize us to ratify, the said Articles of Confederation and perpetual Union, know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual. In witness whereof, we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

This compact did not remove or impair the right of the contracting parties to assert independence of each other.

Napoleon, speaking of the cession of Louisiana (1803), correctly stated the principle which has always been recognized in such cases: "*The confederations which are called perpetual, only last till one of the contracting parties finds it to his interest to break them.*"

The Articles of Confederation went into effect March 2nd, 1781. A brief review of their contents will be of great assistance in the interpretation of our present constitution. Nothing can better indicate the nature of our present organic law than the sharp contrasts between it and the Confederation.

Analyze *Articles of Confederation.* What (a) legislative, (b) executive, (c) judicial powers, with (d) what sanctions, were granted, and (e) to whom?

Some help in solving the problems which grew out of the Declaration of Independence and Articles of Confederation may be had by comparing the Dutch "*Act of Abjuration,*" vid. Motley, Dutch Republic, III, 509; the "*Ghent Pacification,*" same, 124 sq.; and the "*Utrecht Union,*" same, 309 and 414.

Says Senator Edmunds,—North American Review, October, 1881,—"The Confederation was neither legally nor philosophically a government. The states succeeded, in the Articles of Confederation, in combining, on paper, two forms of sovereignty, which were to act together. They granted to the Confederation sovereign rights as they saw was necessary, but without that fundamental requisite of sovereignty—the power to enforce them. The states retained all the means by which the powers could be executed. The Confederation therefore, could not put in operation any of its powers; it depended upon the action of the states for the completion of all its designs;

it became, in operation, a purely advisory body, and was ignored or disregarded by the states at their pleasure.

"The Confederation could contract debts, bnt could not guarantee their payment; it could make treaties, but could not put them in operation; it possessed neither executive nor judiciary; it could only legislate and advise; it could not enforce its legislation nor make its advice respected."

"The Confederation was an institution which derived all its powers for the *states* in their corporate capacities; in other words, it was a government created by and deriving its authority from the governments of the *states*." (*Curtis*: I, 245.)

CHAPTER II.

REQUISITIONS. (*Curtis*, I. 155 sq.)

"Congress met under the Confederation, March 2nd, 1781. Notwithstanding the solemn engagements into which the states had entered with each other under the Articles of Confederation, the prospect of bringing the war to a close through a compliance with these obligations was exceedingly faint at the commencement of the campaign of 1782. The United States had made a treaty of alliance with the King of France, in 1778, and in pursuance of that treaty, 6000 French troops arrived in Newport in July 1780, and in the spring of 1781 joined the American army near New York. The presence in the country of a foreign force, sent hither by the ancient rival of England to assist the people of the United States in their contest for independence, encouraged an undue reliance upon external aid. Many of the states became culpably remiss in complying with the requisites of Congress; and although they had so recently authorized Congress to make requisitions, both for men and money, they gave little heed to their obligations.

"In October and November 1781, Congress called upon the states to raise their several quotas of eight millions of dollars for the use of the United States. In December of the same year, Congress also called upon the states with great urgency to complete their quotas of troops for the next campaign. As the states did not seem likely to respond, the influence of Washington was invoked. He sent letters full of convincing arguments and fervent appeals to the respective Governors, and afterward to the state governments. The spring of 1782 arrived, and the summer passed away without any substantial compliance by the states with the requisitions of Congress for either men or money. When Washington arrived in camp, in May 1782, to commence the campaign which he had hoped would extort from Great Britain a peace, there were fewer than 10,000 men in the northern army; and their numbers were not much increased during the summer."

CHAPTER III.

CLAIMS OF THE ARMY; NEWBURGH ADDRESSES.

"Great and dangerous discontents now existed in the army, both among officers and soldiers, concerning the arrearages of pay; for, as the prospects of peace became brighter, it seemed to become more and more probable that the army would ultimately be disbanded without adequate provision for its claims, and that the officers and men would be thrown penniless upon the world.

"At this period there occurred the famous proceedings of the officers, called the *Newburgh Addresses*, on the subject of half pay; and since the claims of the officers and soldiers as public creditors of the United States are intimately connected with the constitutional history of the country, it is needful to give here a brief account of them.

"The pay of the officers in the revolutionary army was originally established upon so low a scale, that men with families dependent on them could feel little inducement to remain long in a service the close of which was to be rewarded only with a patent for a few acres of land in some part of the western wilderness. In 1778 it had become apparent to Washington that something must be done to avert the dangerous consequences of this policy. He accordingly wrote to the President of Congress the first of a series of able and instructive letters, which extend through the five following years.

"On the 26th of April, ('78) after this first letter had been laid before Congress, it was voted that half-pay be granted for life, beginning at the close of the war, to officers serving up to that time. The next day, the value of this vote was destroyed by a resolution which provided that the United States should have the right to redeem the half-pay for life, by giving to the officers entitled to it *six years'* half-pay: and a little later Congress substituted for the whole scheme a provision of half-pay for seven years, taking away the option of half-pay for life.

"This miserable and vacillating legislation shows the unpopularity of the scheme of such an establishment, although demanded alike by considerations of justice and policy. The spirit, which for a time, actuated a large part of the people of this country towards the men who were suffering so much in the cause of national independence evinces an extreme jealousy for the abstract principles of civil liberty, unmitigated by the generous virtues of justice and gratitude. The main arguments employed out of doors were (a) that pensions were contrary to the maxims and spirit of our institutions; (b) that to grant half-pay for life to the officers was establishing a privileged class of men, who were to live upon the public for the rest of their days; and (c) that the officers entered the service on the pay and inducements originally offered, without any promise or prospect of such a reward.

"This kind of impracticable adherence to a principle, working in this instance the greatest injustice, and leading ultimately to a breach of

public faith, was the principal cause which prolonged the war, and made it cost so much suffering and blood and treasure. The people of the United States clung so tenaciously to the principles and axioms of theoretical freedom, that they were afraid of the necessary civil and military agencies for securing freedom.

"After much debate, Congress at length (Oct. 1780), passed a resolve that the officers who should continue in service to the end of the war should be entitled to half-pay during life, to commence from the time of their reduction. From this time, therefore, the officers of the army continued in the service, relying upon the faith of the country, as expressed in the vote of Oct. '80; and believing, until they saw proofs to the contrary, that the public faith thus pledged to them would be observed. But they were destined to severe disappointment; and one of the causes of that disappointment was the adoption of the *Articles of Confederation*. The very change in the constitutional position of the country, from which the most happy results were anticipated, became the means by which they were cheated of their hopes. The Congress of 1780, which had pledged to them half-pay for life, was the *Revolutionary Congress*; but the Congress which was to redeem this pledge was the *Congress of the Confederation*, which required a vote of nine states for an appropriation of money, or a call upon the states for their proportions. When the vote granting the half-pay was passed, fewer than nine states concurred. After the Confederation was established, the delegates of the states which originally opposed the provision could not be brought to consider it as a compact with the officers. The states opposed to the measure refused to be *coerced* as they expressed it, and in the autumn of 1782 the officers became convinced that they had nothing to hope for from Congress, but a reference of their claims to the several states.

"After preliminary articles of peace had been agreed upon between the United States and Great Britain; and after the officers had endeavored the whole winter, through a committee of their number conferring with members of Congress, to gain an acknowledgement of their claims, desperate measures began to be meditated. On the 10th of March, 1783, an anonymous address was circulated among the officers at Newburgh (N. Y.) calling a meeting to consider the report from their representatives at Philadelphia, and to determine what measures should be adopted for redress of grievances. A dangerous explosion seemed to be at hand. Many of the officers wished to make Washington king and to pledge the army to his support, as they were sure he would do them justice. Washington met the crisis with conciliation, yet with firmness. He forbade a meeting at the call of an anonymous paper, and directed the officers to assemble in an orderly manner. He found it necessary to be himself present and to preside at the meeting. All attempts to repudiate civil allegiance were successfully discouraged, and the whole subject of claims was again referred to the consideration of Congress.

"Congress at last (March 22, 1783) summoned moral courage to vote

five years' full pay from the close of the war, to the officers who had served to that time. The officers now passed into the whole mass of the creditors of the United States. The history of their claims belongs with that of the other public debts of the country. The value of the votes which fixed their compensation, and paid them in public securities, depended, of course, upon the ability of the government to redeem the obligations which it issued. The general financial powers of the Union, under the Confederation must therefore be considered."

CHAPTER IV.

FINANCIAL DIFFICULTIES OF THE CONFEDERATION.

(Still Curtis, 172 sq.)

The public debt of the United States in 1783 when peace was arranged, was forty-two millions of dollars. About eight millions were due on loans obtained in France and Holland; the remainder was due to citizens of the United States. The annual interest of the debt was a little more than $2,400,000.

But before the close of the war, when the Confederation had just gone into operation, it was perceived by many of the principal statesmen of the country, that its financial powers were so entirely defective that Congress would never be able, under them, to pay even the interest on the public debt. In October 1781, Congress made a requisition upon the states for eight millions of dollars, to meet the service of the ensuing year. In January, 1783, a year and three months from the date of this requisition, less than half a million dollars had been received into the treasury of the Confederation.

The leading members of Congress saw ruin impending over the country. They resolved to persevere, however, in endeavors to procure the establishment of revenues equal to the purpose of funding all the debts of the Confederation. Among these persons Hamilton and Madison were the most active; and the part they took in the measures for sustaining the sinking credit of the country, though less conspicuous, was not less important than the services of the patriots in the field. In April, 1783, they procured the almost unanimous consent of Congress to the following plan: viz:—

A. The states to vest in Congress the power of levying certain duties, partly specific and partly ad valorem, upon goods imported into the country; B. The proceeds of such duties to be applied to the discharge of the interest and principal of the debts incurred by the United States for supporting the war; C. The duties to be collected by officers appointed by the *States*, but accountable to *Congress*; D. The *States* to establish for a term of twenty-five years,

substantial and effective revenues, exclusive of these duties to be levied by Congress (but to be devoted to the same purpose : viz : funding the public debt); by each state furnishing its proportional share; E. Finally, the rule of proportion for determining the share of the several states should be based on *population*.

The failure of this plan is the most emphatic commentary on the actual Constitution of the country. The United States had achieved their independence. They were about to take rank among the nations of the world. What that rank should be must be determined by their own actions. Unhappily, the establishment of peace, by turning the attention of politicians to the internal affairs of their own states, tended to weaken the slender bond which held the Union together. The advantage and the necessity of giving the regulation of foreign commerce to the general government, if perceived at all, was perceived only by a few leading statesmen. The commercial states fancied that they profited by a condition of things which enabled them, as importers, to levy contributions on their neighbors. The people did not as yet perceive that, without some central authority to regulate the whole trade alike, the clashing regulations of rival states would sooner or later destroy the Confederacy. Nor were they willing to be taxed for the payment of public debts. The people of the United States had not yet begun to feel that such a burden is to be borne as one of the first of public and social duties. In short, the plan of 1783 effected nothing, and no resource remained to Congress, after the close of the war, but the old method of making requisitions on the states. With what success this was attended may be seen from the fact that from 1782 to 1786 Congress made requisitions on the states, for the purpose of paying the interest on the public debts, amounting to more than six millions of dollars, and in March, 1787, only about *one* million of this sum had been received. The interest of the debt due to domestic creditors remained wholly unpaid; money was borrowed in Europe to pay the interest on the foreign loans; and the domestic debt sunk to so low a value that it was often sold for one tenth of its nominal amount.

Thus the System of the Confederation had utterly failed to supply the means of sustaining the public credit of the Union; and the consciousness of that failure tended to produce a resolution of the Union into its component elements—the states. Men had begun to abandon the hope of paying the debts of the country; or, if they were to be paid at all, they had begun to look to the *states*, in their individual capacities, as the ultimate debtors to whom at least a part of the claim was to be referred. Had the country been permitted to pass from a state of war to a state of peace, without the suggestion and proposal of a definite system for funding these debts on continental securities, the Union would at once have been exhausted of all vitality. The Confederation, left to discharge the functions which belonged to it in peace, without the power of relieving the burdens which it had entailed upon the country during the war,

would have been everywhere regarded as a useless machine, the purposes of which had entirely ceased to exist.

But the comprehensive scheme of 1783, although never adopted, saved the imperfect Union that then existed from the destruction to which it was hastening. It saved it for a prolonged, though feeble existence, through a period of desperate exhaustion. It saved it by ascertaining the debts of the country, fixing their national character, and proposing a national system for their discharge. It directed the attention of the states to the advantage and the necessity of giving up to the Union some part of the imports on foreign commodities, and thus led the way to the grand idea of uniformity of regulation, that was afterwards developed as the true interest of communities, which from their geographical and moral relations constitute naturally one country.

CHAPTER V.

WASHINGTON AND HAMILTON ON REORGANIZATION.

(Still following Curtis.)

The proposal of the revenue system went forth to the country nearly at the same time with those comprehensive and weighty counsels of Washington in his farewell address. His object in this address was not so much to urge the adoption of particular measures as to inculcate principles which he believed to be essential to the welfare of the country. So clearly, however, did it appear to him that the honor and independence of the country were involved in the adoption of the revenue system which Congress recommended, that he urged it as the sole means by which national bankruptcy could be averted, until a better plan could be proposed.

It is quite certain too, that at this period Washington saw the defects of the Confederation as he had seen them clearly, and suffered under them from the beginning. He saw that in the powers of the states, which far exceeded those of the Continental Congress, lay the source of all the perplexities which he had experienced in the course of the war, and that to form a constitution which would give consistency, stability, and dignity to the Union, was the great problem of the time. He saw also that the honor and true interest of the country were involved in the development of continental power; that local and state politics were destined to interfere with the establishment of any more liberal and extensive plan of government which the circumstances of the country required, and that such local influences would make these states the sport of European policy.

But there was one man in the country who had looked more deeply

still into its wants, and who, even before the Confederation had been practically tried, had formed the clearest views of the means necessary to meet the necessities of the situation. A reorganization of the government had engaged the attention of Hamilton as early as 1780; and with his characteristic penetration and power he saw and suggested what should be the remedy for existing disorders. He proposed, instead of the Articles of Confederation, that complete sovereignty should be vested in Congress, except as to that part of internal policy which relates to rights of property and life among individuals; and to raising money by internal taxation, which he admitted should be regulated by the state legislatures. But in all that relates to war, peace, trade and finance, he maintained that the sovereignty of Congress should be complete; that it should have the entire management of foreign affairs, and of raising and officering armies and navies; that it should have the entire regulation of trade, determining with what countries it should be carried on, laying prohibitions and duties, and granting bounties and premiums; that it should have certain perpetual revenues of an internal character, in specific taxes, that it should be authorized to institute admiralty courts, coin money, establish banks, appropriate funds, and make alliances offensive and defensive, and treaties of commerce. He recommended also that Congress should immediately organize executive departments of foreign affairs, war, marine, finance and trade, with great officers of state at the head of them.

That these propositions were not carried out, we already know. The contrast between the Confederation and the scheme thus outlined by Hamilton sufficiently measures the distance between the Congress of the Confederation and responsible government. As the time approached when the Confederation would necessarily be tested as a government for the purposes of peace, Hamilton's views on the subject of a peace establishment were equally extensive and important. He saw that the Confederation contained provisions which looked to the continuance of the Union after the war had terminated, and that these provisions required practical application, through a machinery which had never been even framed. The Articles of Confederation vested in Congress the exclusive management of foreign relations, but the department of foreign affairs had never been properly organized. They also gave to Congress the exclusive regulation of trade and intercourse with the Indian nations; but no department of Indian affairs, with properly defined powers and duties, had been established. Nothing had ever been done to carry out the provision for fixing the standard of weights and measures throughout the United States, or to regulate the alloy and value of the coin. Above all, the great question of means, military and naval, for the external and internal defense of the country during peace, for the preservation of tranquility, the protection of commerce, the fulfillment of treaty stipulations, and the maintenance of the authority of the United States had not been so much as touched. It was denied by large numbers of the people that the Confederation had any authority to maintain armed forces in times of peace.

Hamilton was made chairman of a committee of Congress which was to take these defects into consideration. He concluded that the only remedy for them was radical reform of the Confederation. He attempted to induce Congress to inform the country freely and frankly of the defects of the Confederation, which made it impossible to conduct the public affairs with honor to the state and advantage to the Union; and to recommend to the several states to appoint a convention, with full powers to revise the Confederation, and to propose such alterations as might appear to be necessary, the same to be finally approved or rejected by the states.

But Hamilton was surrounded by men who were not equal to the great enterprise of guiding and enlightening public sentiment. He was in advance of the time, and far in advance of the politicians of the time. He experienced the fate of all statesmen, in the like position, whose ideas have had to wait the slow development of popular comprehension and assent. He saw that his plans could not be adopted, and he passed out of Congress into private life.

The temper of the time was wholly unfavorable to strong government. The early enthusiasm with which the nation, guided by a common impulse and animated by a common spirit, had rushed into the conflict with England, had given place to calculations of local advantage. As a consequence and proof of the decline of central power, it is worthy of observation that in 1783 Congress had practically dwindled to a feeble junto of about twenty persons, without the dignity and safety of a local habitation, and without the presence of any of the great and powerful minds who led the earlier counsels of the country.

While therefore the United States emerged from the war, with independence acknowledged, dark and portentous clouds gathered about the dawn of peace, as the future opened before them. The dangers and embarrassments through which victory had been achieved made it apparent that the government of the country was unequal to its protection and prosperity. That government was now called to assume the great duties of peace, without the acknowledged power of maintaining either an army or navy; without the means of combining the several parts of the country to a general end; without the least control over commerce; without the power to fulfill a treaty; without laws acting upon individuals; with no mode of enforcing its own will but by coercing a delinquent state to its federal obligations by force of arms. How it met the great demands upon its energy and durability, which its new duties involved, we are now to enquire.

Division 2.—From Peace of 1783 to Federal Confederation, 1787.

CHAPTER I.

THE CONDITION OF THE CONFEDERATION.

(Still following Curtis.)

There are scarcely any evils or dangers of a political nature, and springing from political and social causes, to which a free people can be exposed, which the people of the United States did not experience during this period. That those evils and dangers did not precipitate the country into civil war, and that the great undertaking of forming a constitutional government could be prosecuted, is owing partly to the fact that the country had hardly recovered from the exhausting effects of the revolutionary struggle; but mainly to the existence of a body of statesmen formed during that struggle, and fitted by hard experience to build up a government. Before their efforts and their influences are explained, the period which developed the necessity for their interposition must be described. He who would know what the Constitution of the United States was designed to accomplish must understand the circumstances out of which it arose.

On the 3rd of November, 1783, a new Congress, according to annual custom, was assembled at Annapolis, and attended by only fifteen members, from seven states. Two great acts awaited the attention of this assembly;—both of an interesting and important character, both of national concern. The one was the *resignation of Washington*: the other was a legislative act, which was to give peace to the country, by the *ratification of the Treaty*. Several weeks elapsed, and yet the attendance was not much increased. Washington's resignation was received at a public audience of seven states represented by about twenty delegates; and on the same day letters were despatched to the other states, urging them, for the safety, honor, and good faith of the United States, to require the immediate attendance of their members. It was not, however, until the 14th of January, 1784, that the Treaty could be ratified by the constitutional number of nine states; and when this took place, only twenty-three members were present.

Such was the government which was now called upon to pay at least the interest on the public debts, and to procure the means for its own support. But the entire incompetence of the Confederation grew each day more apparent. From November 1781, to January 1786, less than two and one-half millions of dollars had been received from requisitions, made during that period, amounting to more than ten millions. The interest on the foreign debt amounted to more than half a million annually. In addition to this the interest on the domestic debt; the

sum of one million a year due on the *principal*, of the foreign debt; the security of the navigation and commerce of the country against the Barbary powers; the immediate protection of the people dwelling on the frontier from the savages; the establishment of military magazines in different parts of the Union; the maintenance of the federal government at home, and the support of the public servants abroad,—each and all depended upon the contribution of the states under the annual requisitions, and were each and all likely to be involved in a common failure and ruin.

CHAPTER II.

INFRACTIONS OF THE TREATY OF PEACE.

(Curtis still.)

The Treaty of Peace ratified January 14, 1784, contained provisions of great practical and immediate importance. One of its chief objects on the part of the United States was, of course, to effect the immediate withdrawal of the British troops, and of every sign of British authority. A stipulation was accordingly introduced, by which the King bound himself, with all convenient speed, and without causing any destruction, or carrying away any slaves or other property of the American inhabitants, to withdraw all his armies, garrisons and fleets from the United States and from every post, place and harbor within the same. Although the ratification of the treaty was followed by the departure of the British forces from the Atlantic coast, many important posts in the western country, within the incontestable limits of the United States, with a considerable territory around each, were still retained.

On the part of England, it was of great consequence to secure to British subjects the property and rights of property of which war had deprived them. Clear and explicit stipulations were therefore inserted in the treaty, to protect these interests. The action of the states, however, with regard to some of these stipulations had from the beginning been irregular. At the commencement of the war, $15,000,000 were due from the inhabitants of the colonies to the merchants of Great Britain. At the return of peace the laws of five states were found either to prohibit the recovery of the principal, or to suspend its collection, or to otherwise impair the obligation. The *treaty* declared that all *bona fide* debts contracted before the date of the treaty and due to citizens of either country remained unextinguished by the war; and consequently that interest, when agreed to be paid, or payable by the custom, or demandable as damages for delay of payment was justly due. The state laws were thus in direct conflict with the Treaty.

The *fifth article of the Treaty was infringed* by an act passed by the State of New York authorizing actions for rent by persons who had been compelled to leave their lands and houses by the enemy, against those who had occupied such estates while the enemy were in possession; and declaring that no military order or command of the enemy should be pleaded in justification of such occupation.

The *sixth article was violated* by an act of the same State which made those inhabitants who had adhered to the enemy, if found within the State, guilty of misprision of treason, and rendered them incapable of holding office, or of voting at elections.

The powers of the government were entirely inadequate to meet this state of things. The Confederation gave to the United States in Congress assembled the sole and exclusive right of determining on peace and war, and of entering into treaties and alliances, but there existed no means of enforcing the obligation of a treaty. If the legislatures of the states passed laws restraining or interfering with the provisions of a treaty, Congress could only declare that these laws *ought* to be, and recommend that they *should* be, repealed.

The consequences upon the relations of the two countries were direct and mischievous. The Treaty of Peace was designed, and was adapted, to produce a fair and speedy adjustment of those relations. Its obligations were, however, reciprocal and it could not execute itself. After the lapse of more than two years from the signing of the Treaty, the military posts in the western country were still held by British garrisons, avowedly on account of the infractions of the Treaty on *our part*. The Minister of the United States at St. James's was told, in answer to his complaints, that one party could not be obliged to a strict observance of the engagements of a treaty, while the other remained free to disregard them; and that whenever the United States should manifest a real determination to fulfil their part of the treaty, Great Britain would be ready to carry every article into complete effect. The states refused to pass the necessary laws giving force to the Treaty. The two countries were thus brought to a halt in their efforts to adjust the matters in dispute, and the western posts remained in the hands of British garrisons, who inflamed the hostility of the Indians towards the Americans, and enhanced the difficulty of settling the vacant lands in the fertile region of the Great Lakes.

CHAPTER III.

POWERLESSNESS OF THE CONFEDERATION AS A PROTECTOR OF THE STATES.

(Still Curtis p. 260 sq.)

No federative government can be of great permanent value which is not so constructed that it may stand, in some measure, as the common sovereign of its members, able to protect them against internal disorders, as well as against external assaults. A federal league of states independent of each other, formed principally for mutual defence against a common enemy, was all that succeeded to the general superintending power of the British crown, by which the internal affairs of each of them had always been regulated and controlled, in the last resort. After the tie with the protecting mother country had been broken, and after state constitutions, admirable in themselves, had been formed, it began to appear that the fundamental principles in which all of these constitutions rested, itself required means of defence. This principle was that it is the right of every political society to govern itself, and for the purposes of such self-government to create such constitutions and ordain such fundamental laws as its own judgment and its own intelligent choice find best suited to its own interests.

But society can act only by an expression of the aggregate will of its own members; and as there may be members who dissent from the views and determinations of the great mass of society, and it is therefore necessary—in order that there may be peace—to decide with whom the power of compelling peace resides, nature and reason have determined that this power shall reside with a *majority* of the members. The American constitutions, therefore, are founded wholly upon the principle that a majority expresses the will of the whole society, and may establish, change, and abrogate forms of government by methods legally established. It follows, as a necessary deduction from this fundamental doctrine, that as soon as society has acted in the formation and establishment of a government upon this principle, no change can take place, but by a new expression of the will of society through the voice of a majority; and whether a majority desires or has actually decreed a change, is a fact that can only be made certain in one of two ways:—(1) by the evidence and through the channels which the society has previously ordained for this purpose; or (2) by the submission of all its members to a violent and successful revolution.

The American people seized eagerly upon the newly established principle which made them the source of all political power, but they did not for a long time comprehend the rule just mentioned which preserves and upholds that power, and makes the doctrine itself both practical and safe. Hence, when troubles arose, individuals were led to suppose that they had only to declare a grievance, demand a change, and *to*

compel compliance with their demand by force. So far as they reasoned at all, they persuaded themselves that, as their government was the creation of the people, by their own direct act, bodies of the people could assemble in their primary capacity, and by obstructing any of its functions that they connected with a particular grievance, produce a reform which the people have always a right to make. By overlooking, in this manner, the only safe and legitimate mode in which the popular will can be really ascertained, they passed into the mischiefs of anarchy and rebellion, mistaking the voice of a minority for the ascertained will of society.

To these tendencies, the recently established governments of New England, where the spirit of liberty was most vigorous, could oppose no efficient check; while, in an open outbreak they were without any external defender, on whose power they could lean. The Confederation was a union from which all powers had been jealously withheld which would have enabled it to interfere with vigor and success between an insurgent minority of the people of a state and its lawful rulers. These positions are amply illustrated in the episode which follows.

CHAPTER IV.

SHAYS'S REBELLION.

In such a state of things, the year 1786 witnessed an insurrection in Massachusetts of a very dangerous character, which from the fortunate circumstance that her counsels were then guided by a man of singular energy and firmness she was just able to subdue.

At the close of the Revolutionary War, the State of Massachusetts was oppressed with an enormous debt. At the breaking out of the war, the debt of the colony was less than $500,000. In the year 1786 the private debt of the state was $7,750,000. According to the customary mode of taxation, one third of the whole debt was to be paid by the ratable polls, which scarcely exceeded 90,000. The Revolution had made the people of Massachusetts familiar with the great general doctrines of liberty and human rights; but it had given them little insight into the principles of revenue and finance, and little acquaintance with the rules of public economy. No sufficient means therefore were devised to relieve the people from direct taxation, by encouraging a revival of trade, and at the same time drawing from it a revenue. The people were every year growing poorer than they had been the year before, and taxes, beyond their resources, and always odious, were each year becoming more burdensome.

But the demand of the tax-gatherer was not the sole burden which

individuals had to encounter. *Private* debts had accumulated during the war, in almost as large a ratio as the public obligations. The collection of such debts had been generally suspended, while the struggle for political freedom was going on; but that struggle being over, creditors necessarily became active, and were often obliged to be severe, Suits were multiplied in the courts beyond all former precedent, and the first effect of this sudden influx of litigation was to bring popular odium upon the whole machinery of justice. In a state of society approaching so nearly to a democracy, the class of debtors, if numerous, must be politically formidable. As a fact, a levelling, licentious spirit, a restless desire for change, and a disposition to throw down the barriers of private rights, at length broke forth in conventions, which first voted themselves to be the people, and then declared their proceedings to be constitutional. At these assemblies the doctrine was publicly broached that property ought to be common because all had aided in saving it from confiscation by England. Taxes were voted to be unnecessary burdens, the courts of justice intolerable grievances, and the legal profession a nuisance. A revision of the State Constitution was demanded in order to abolish the Senate, reform the representation in the House, and make all the civil officers in the state directly eligible by the people.

A passive declaration of their grievances did not, however, content the disaffected. They proceeded to enforce their demands. The nearest objects for attack, because most immediately connected with their grounds of complaint, were the courts of justice. Armed mobs surrounded the court-houses in several counties, and sometimes effectually obstructed the sessions of the courts. These acts culminated in a formidable insurrection in western Massachusetts, in the autumn of 1786. The insurgents actually in armed and organized rebellion numbered 1,500 men, led by Daniel Shays, who had been a captain in the Continental Army.

The Executive Chair of the State was at that time filled by James Bowdoin; a statesman firm, prudent, upright, and devoted to the cause of constitutional order. In the first stages of the disaffection, he had been thwarted by a House of Representatives in which the majority sympathized somewhat with the general spirit of the insurgents. The Senate supported him. Later, when the movement grew more dangerous, the legislature encouraged the executive to use the powers vested in him for enforcement of law. A body of militia was accordingly marched against the insurgents, and by the middle of February they were dispersed or captured with but little loss of life.

The actual resources of the state, however, to meet an emergency of this kind were few and feeble. A voluntary loan, from a few public-spirited men, supplied the necessary funds, of which the treasury of the state was wholly destitute. At one time, so general was the prevalence of discontent, even among the militia, the sole reliance of the state government, that men were known openly to change sides in the field, when the first bodies of troops were called out. The political situation of the country did not seem to admit of application to Congress for direct assist-

ance, and there is no reason to suppose that such an application would have been effectively answered, if it had been made. Had the Governor been less firm and less careless of popularity than Bowdoin, the state would have been given up to anarchy.

This generation can hardly depict to itself the alarm which these disturbances spread through the country, and the extreme peril to which the whole fabric of society in New England was exposed. The disaffected in Massachusetts comprised one-fifth of the inhabitants in certain counties. Their doctrines and purposes were embraced by many young, active, and desperate men in Rhode Island, Connecticut, and New Hampshire, and the whole of this faction in the four states could furnish twelve or fifteen thousand men, bent on annihilating property and cancelling all debts, public and private.

But this great peril was not without beneficial consequences. It displayed, at a critical moment, when a project of amending the Articles of Confederation for other purposes was encountering much opposition, a more dangerous deficiency than any to which the public attention had hitherto been turned. While thoughtful and considerate men were speculating upon the causes of diminished prosperity and the general feebleness of the Confederation, a gulf suddenly yawned beneath their feet, threatening ruin to the whole social fabric. It was but a short time before, that the people had shed their blood to obtain constitutions of their own choice and making. They now seemed as ready to overturn them. It was clear that the Federal Union alone could certainly uphold the liberty which it had gained for the people of the states, but to do this, it must become a government.

CHAPTER V.

ORIGIN AND NECESSITY OF THE POWER TO REGULATE COMMERCE.

(Curtis still.)

Among all the causes which led to the establishment of the Constitution of the United States there is none so important and none that is less appreciated at the present day than the inability of the Confederation to manage the foreign commerce of the country. The return of peace found this country capable of becoming a great commercial as well as agricultural nation; and it could not be overlooked that its government possessed very inadequate means for establishing such relations with foreign powers as would best develop its resources and conduce to its internal harmony and prosperity. The Confederation could not negotiate advantageous commercial treaties, because foreign countries knew that

it had no power to enforce them. The Confedeartion was powerless against measures of foreign nations injurious to American trade.

(vid. Hamilton's papers, "*The Continentalist.*")

The most important of our commercial relations were with Great Britain. When the war was drawing to a close, Mr. Pitt was perfecting an arrangement looking to a settlement of commercial interests so advantageous to this country that the states would doubtless have conformed their legislation to its provisions. Mr. Pitt's bill was designed to admit the vessels and subjects of the United States into all ports of Great Britain in the same manner as the subjects and vessels of other sovereign states, and to admit the goods of this country on the same terms as if they were the goods of British subjects, imported in British vessels. It also proposed to establish an entirely free trade between the United States and the British islands, colonies and plantations in America. But Pitt went out of power, and the following administration adopted a totally different policy.

The new British administration believed that Pitt's plan would encourage the American carrying trade, and deprive England of a portion of its markets. It believed that we could not act, *as a nation*, upon questions of commerce; that the climate, products and manners of the states were so different that their interests could not be reconciled under general provisions. It therefore determined to deal with this country as a collection of rival states, with each of which England could make its own terms, after the pressure of the changed policy of the British administration began to be felt. An "Order in Council" accordingly excluded from the British West Indies the whole American marine, and prohibited fish, and many important articles of our produce from being carried there even in British vessels.

At the termination of the war, the foreign commerce of the United States was capable of great expansion. It consisted of three important branches, each requiring the means of reaching foreign markets: the trade of the Eastern, that of the Middle, and that of the Southern States.

The Eastern States could supply a European demand for spars, ship-timber, staves, boards, fish, oil, etc.; and could furnish the West Indies with lumber, pork, beef, live cattle, horses, cider, fish.

The Middle States had tobacco, tar, grain and flour for European markets, with lumber, tar and iron wanted in the West Indies.

The Southern States wanted a foreign market for tobacco, rice, indigo, etc.

The whole of these great interests of course received a sudden and almost fatal blow from the English Orders in Council, and no recourse was available but such as each state could provide for its own people, by its own legislation. From the close of the war to the convention of 1787 the legislation of the different states, designed to protect themselves against the policy of England, was without system, or concert or uniformity. At one time duties were made extravagantly high; at another,

competition reduced them so low that they yielded almost no revenue. At one time the states acted in open hostility to each other, at another they proposed commercial leagues, regardless of the Articles of Confederation. No steady system was pursued by any of them, and the inefficiency of state legislation became at length so apparent, that a conviction of the necessity of new powers in Congress forced itself on the public mind.

CHAPTER VI.

THREATENED LOSS OF THE WESTERN SETTLEMENTS.

(Curtis still.)

The magnificent region in which now lie the powerful states of Ohio, Indiana, Illinois, Michigan and Wisconsin became the property of the Confederation by cession of the state of Virginia, March 1, 1784. Cessions by the states of New York, Massachusetts, Connecticut and South Carolina, increased the territory of the Confederation in the Mississippi valley, and provisions were made for its government. These western lands, flanked by the dependencies of Great Britain on the north and of Spain on the south, and rapidly filling with a bold, adventurous and somewhat lawless population, whose ties of connection with the Eastern States were almost sundered by the remoteness of their position and the difficulties of communication, *stood upon a pivot*, where accident might have thrown them out of the Union. The people of the west found themselves in a country capable of supporting a population three times as great as that of the states east of the Alleghany Mountains, and intersected by natural water communications of the most ample character, all tending to the great highway of the Mississippi. A soil richer than any over which the Anglo-Saxon race had hitherto spread itself in the temperate latitudes of this continent; large plains and meadows, capable, without labor, of supporting millions of cattle; and fields destined to vie with the most favored lands on the globe, in the production of wheat, were already accumulating on the banks of their rivers a weight of produce far beyond the necessities of subsistence, and were demanding the means of reaching the markets of the world. The people of the Atlantic States knew little of the situation or resources of this country. They valued it chiefly because the public debt might be paid by the sale of its lands. Until they were in imminent danger of losing it from the inefficiency of the Confederation they had little idea of the supreme necessity of securing for it an outlet to the sea, if they would preserve it to the Union.

The treaty between the United States and Great Britain recognized as

the southern boundary of the United States a line drawn from the point where the 31st parallel of north latitude intersects the Mississippi river, due east to the line which has continued to be the boundary between Alabama and Georgia, then south and again easterly along the line now the boundary between Georgia and Florida. The portions of the continent south of this line and west of the Mississippi belonged to Spain. The treaty also stipulated that the navigation of the Mississippi, from its source to the gulf and the ocean should forever remain free and open to the subjects of Great Britain and the citizens of the United States.

When the treaty came to be ratified and published, the Spanish government immediately proclaimed its opinion that no treaty between Great Britain and the United States could settle the boundaries between the latter power and Spain, or give to either the United States or Great Britain a right to navigate a river passing wholly through Spanish dominions. Spain accordingly notified Congress that until the limits of Louisiana and the two Floridas should be determined by treaty with itself, it would assert its claim to exclusive control of the river; and also that the navigation would under no circumstances be conceded while Spain held the right to its control.

Now follows a long series of negotiations between the United States and Spain. The latter country refused to modify its claim to exclusive ownership and control of the great river. The people and statesmen of the United States were divided in opinion upon the subject. The Eastern States wanted above all things a commercial treaty with Spain and were willing to concede the right to the Mississippi as the price of it. Even Washington did not think the right to navigate the river was of any considerable value. He had prevailed upon the government of Virginia to cause a survey of the whole country from the head of navigation on the James and Potomac rivers, to lake Erie; and he thought it best to construct canals where necessary, and to direct the commerce of the West over the mountains of Virginia to the coast.

Madison avowed his opinion, (1787,) that *the shutting of the Mississippi would be advantageous to the Atlantic States, and he wished to see it shut.* (!) Similar opinions prevailed to such an extent that Congress (1786) voted to instruct Mr. Jay, the American agent, to agree with the Spanish Minister on an article which suspended the use of the Mississippi without relinquishing the right asserted by the United States.

While these proceedings were going on an occurrence took place at Natchez, which roused the jealousy of the whole West. A seizure was made then, by the Spanish authorities, of certain American property which had been carried down the river for shipment or sale at New Orleans, (June 6, 1786.) The owner, returning slowly to his home in North Carolina, detailed everywhere the story of his wrongs. The news, as it circulated up the valley, met the report that Congress proposed to surrender the present use of the Mississippi. Alarm and indignation fired the whole population of the West. They believed that they were to be sacrificed to the commercial policy of the United States; and

feeling that they stood in the relation of *colonists* to the rest of the Union, they used language not unlike that which the old colonies had used towards England.

They surveyed the magnificent region which they were subduing from the dominion of Nature;—the inexhaustible resources of its soil already yielding an abundance, which needed only a free avenue to the ocean to make them rich and prosperous;—and they felt that the mighty river which swept by them with a volume of waters capable of floating the navies of the world, had been destined by Providence as a natural channel through which the productions of their imperial valley should be made to swell the commerce of the globe. But the Spaniard was seated at the outlet of this noble stream, sullenly refusing them all access to the ocean. To him they must pay tribute. To enrich him, they must till those luxuriant lands which gave, by an almost spontaneous production, the largest return that American labor had yet reaped under the industry of its own free hands. Their proud spirits, unaccustomed to restraint, and expanding in a liberty unknown in the older sections of the country could not endure this vassalage. Twenty thousand effective men west of the Alleghanies were ready to rush to the mouth of the Mississippi and drive the Spaniards into the sea. Great Britain stood with open arms to receive them. If not aided by the Confederation their allegiance would be thrown off, and the United States would find too late that they were as ignorant of the great valley of the Mississippi as England was of the Atlantic States when the contest for independence began.

It was natural that acts of retaliation upon the Spaniards should be committed by the western settlers. A certain Gen. Clarke, claiming authority from the State of Virginia, undertook to enlist men and establish a garrison for the protection of the district of Kentucky. He seized some Spanish property for the support of his men, and sent an officer to Illinois, to report the seizures of American property at Natchez, and to advise retaliation for any further Spanish outrages. The people of the West began to form committees of correspondence, in order to unite their counsels and interests.

While the Mississippi question was pending, the affairs of the country had taken a new turn. The convention called to revise the system of the Confederation was to meet in May 1787. It had become sure and plain that a large increase of the powers of the Confederation was absolutely essential to the continuance of the Union and the prosperity of the states. The situation of the country was becoming every day more critical. No money came into the federal treasury; no respect was paid to federal recommendations, and all men saw and admitted that the Confederation was tottering to its fall. Some prominent persons in the Eastern States were suspected of leaning towards monarchy; others openly predicted a partition of the states into two or more confederacies; and the distrust which had been created by the project for closing the

Mississippi rendered it extremely probable that the western country, at least, would be severed from the Union.

The advocates of that project recoiled therefore from the dangers which they had unwittingly created. They said that harmony and confidence should be studiously cherished now that the great enterprise of remodelling the Union on a firmer basis was to be attempted. They saw that no new powers could be obtained for the Confederation if it should burden itself with an act so certain to be the source of strife, and so likely to destroy the Union, as the closing of the Mississippi. Like wise and prudent men therefore, they availed themselves of the probable formation of a new government, and by general consent postponed the whole matter to await the action of the great convention of 1787. After the Constitution had been adopted the negotiation was formally referred to the new federal government which was about to be formed, (Mar. 1789); with a declaration of the opinion of Congress that the free navigation of the river Mississippi was a clear and essential right of the United States and ought to be so considered and supported.

The facts thus enumerated abundantly support the allegation with which this division of the argument began; viz: that *the Confederation was in no proper sense a government.* They further show that in the revolted colonies political evolution had gone no farther than the establishment of thirteen communities legally independent of all the rest of the world and of each other. No American nation had been formed. The people of the states needed to be in closer union, for the strongest of political and economic reasons. Each state must however decide for itself whether it would be a party to the establishment of a more rational political order. Tardy recognition of political and economic needs resulted in the assembling of the *Federal Convention*, February 21, 1787.

CHAPTER VII.

CONSTITUTION OF THE UNITED STATES OF AMERICA.

PREAMBLE.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I.—THE LEGISLATIVE DEPARTMENT.

SECTION I.—DIVISION OF LEGISLATIVE POWERS. 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a senate and house of representatives.

(*Note to Chapter VI.*)

The Federal Convention.

The people of the several states, with the single exception of Rhode Island, chose delegates authorized to co-operate with delegates from the other states, in *drafting a revision of the Articles of Confederation*. The Convention did not complete its work until September 1787. Its sessions had been secret. So little was known of its purposes, that at length a rumor spread that the Convention intended to recommend the establishment of a monarchy, with the second son of George III., the so-called *Bishop of Osnabruck*, on the throne. The members of the Convention represented all the varieties of opinion in the different states. A scheme that would please each of them was an impossibility. Without pretending to unanimously approve, or even promising to support, in their own states, the scheme upon which they finally compromised, the delegates agreed to present to the states, for acceptance or rejection—not by the state governments, but—*by popular conventions chosen for the purpose*, the following plan of government.

SECTION II.—THE HOUSE OF REPRESENTATIVES. 1. The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; (and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware; one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.)

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION III.—SENATE. 1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained to the age of thirty years and been nine years a citizen of the United States; and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The vice-president of the United States shall be president of the senate; but shall have no vote, unless they be equally divided.

5. The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment, in case of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION IV.—ELECTIONS OF SENATORS AND REPRESENTATIVES. 1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislatures thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

2. The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.—ORGANIZATION OF CONGRESS. 1. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION VI.—PRIVILEGES AND RESTRICTIONS. 1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for

any speech or debate in either house they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION VII.—MODE OF PASSING BILLS. 1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

2. Every bill which shall have passed the house of representatives and the senate shall, before it become a law, be presented to the president of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.—POWERS VESTED IN CONGRESS. The Congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, to fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post offices and post roads:

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the supreme court:

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

13. To provide and maintain a navy:

14. To make rules for the government and regulation of the land and naval forces:

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States; and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings:

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION IX.—RESTRICTIONS ON THE GENERAL GOVERNMENT. 1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder, or ex post facto law, shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration heretofore directed to be taken.

5, No tax or duties shall be laid on articles exported from any state.

6. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility thall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION X.—RESTRICTIONS ON THE STATES. 1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

ARTICLE II.—THE EXECUTIVE DEPARTMENT.

SECTION I.—ELECTION AND QUALIFICATIONS OF EXECUTIVE 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the Congress; but no senator, or representative, or person holding an office of trust or profit under the United States shall be appointed an elector.

[3. *The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list

*This clause, within brackets, has been superseded by the 12th Amendment.

they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then, from the five highest on the list, the said house shall, in like manner, choose the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But, if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president.]

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United Sates.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president; and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president; and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECTION. II.—POWERS OF THE PRESIDENT. 1. The president shall be commander-in-chief of the army and navy of the United States.

and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer, in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate shall appoint, ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION III.—DUTIES OF THE PRESIDENT. 1., He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and, in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION IV.—IMPEACHMENTS. 1. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.—THE JUDICIAL DEPARTMENT.

SECTION I—JUDICIAL POWER, HOW VESTED. 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION II.—JURISDICTION DEFINED. 1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdic-

tion; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exemptions, and under such regulations, as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

SECTION III.—DEFINITION AND PUNISHMENT OF TREASON. 1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.—MISCELLANEOUS PROVISIONS.

Section 1.—RIGHTS OF STATES. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION II.—PRIVILEGES AND LIABILITIES OF CITIZENS. 1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.—ADMISSION OF NEW STATES AND REGULATION OF OTHER TERRITORY. 1. New states may be admitted by the Congress into this Union; but no new states shall be formed or erected within the

jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislature of the states concerned, as well as of the Congress.

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION IV.—REPUBLICAN GOVERNMENT GUARANTEED TO THE STATES. 1. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.—AMENDMENTS.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.—NATIONAL OBLIGATIONS; DECLARATION OF SUPREMACY; AND TESTS OF QUALIFICATION FOR OFFICE.

1. All debts contracted and engagements entered into before the adoption of this constitution, shall be as valid against the United States under this constitution as under the Confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall

ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.—Ratification.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEO. WASHINGTON,
Presidt. and deputy from Virginia.

AMENDMENTS TO THE CONSTITUTION.

Article I. *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Article II. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Article III. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war but in a manner to be prescribed by law.

Article IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state

*The first ten amendments were proposed in 1789, and declared adopted in 1791.

and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined, in any court of the United States, than according to the rules of the common law.

ARTICLE VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX. The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

*ARTICLE XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state.

†ARTICLE XII. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of choice shall de-

*The eleventh amendment was proposed in 1794, and declared adopted in 1798.

†The twelfth amendment was proposed in 1803, and declared adopted in 1804.

volve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

*ARTICLE XIII. SECTION I. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION II. Congress shall have power to enforce this article by appropriate legislation.

†ARTICLE XIV. SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION II. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in Congress, the executive or judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion in which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

SECTION III. No person shall be a senator or representative in Congress, or elector of president or vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same,

*The thirteenth amendment was proposed and adopted in 1865.

†The fourteenth amendment was proposed in 1866, and adopted in 1868.

or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

SECTION IV. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pension and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION V. Congress shall have power to enforce, by appropriate legistation, the provisions of this article.

*ARTICLE XV. SECTION I. The rights of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

SECTION II. Congress shall have power to enforce this article by appropriate legislation.

CHAPTER VIII.

ANALYSIS OF THE CONSTITUTION.

Of the scheme proposed by the Convention, taken in connection with the different state constitutions, which must be considered as parts of the same plan of government, the fundamental character was as follows:—

The government thus outlined was a complex system—one central or general administration, for *national* purposes; *many* state administrations with independent control over local concerns. It is not true that either of these governments was *supreme over the other*. It is true that each government was *supreme over certain particular subjects*. The state governments were supreme within their sphere; while within that sphere the general government had absolutely no jurisdiction. The general government was supreme within its wider sphere, and here the states in their turn, were powerless.

In justification of the foregoing, we remark (following Pomeroy, *Constitutional Law*, § 98, sq.):—

THE GOVERNMENT PROVIDED FOR BY THE CONSTITUTION WAS, FIRST, NATIONAL.

This fact is shown:—

A. *By the preamble.*

"We the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common

*The fifteenth amendment was proposed in 1869, and adopted in 1870.

defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America."

It was frequently denied by the partisans of State Sovereignty, that the language of this preamble condemned their views. But the framers of the Constitution of the Southern Confederacy (1861) bore unwilling testimony that the language of the original Constitution did not teach State Sovereignty. They adopted as a substitute the following:—

"We, the people of the Confederate States, *each state acting in its sovereign and independent character*, in order to form a *permanent federal government*, establish justice, etc., do ordain and establish this constitution for the confederate states of America."

The nationality of the government is implied:—

B. *By the Declaration of Supremacy.* (Art. VI. § 2.)

"This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the Land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

This declaration implies that the united people, the source of all political power, have delegated a portion of their own inherent powers of legislation and government, to their appointed rulers; and that in the exercise of those delegated powers these rulers are *supreme* throughout the land. Before the adoption of the Constitution, the state governments had the sole right to make laws concerning *bankruptcies*, for example. But by the Constitution, the people gave to the general government supreme power of legislation upon that subject. (Art. I. Sec. 8. § 4.) If Congress exerts its authority, though every state in the Union should enact other bankrupt laws, the latter would be null, while the law of Congress would be binding in every state.

The Constitution implies the nationality of the government:—

C. *By assuming that the status of citizenship and the consequent duty of allegiance, exist independently of the written constitution itself.* (The instrument however establishes the *legal* claim to that allegiance.) In this, the Constitution is in bold contrast with the Articles of Confederation. Were the contemplated government a mere federation of equal, sovereign states, united for certain purposes of administration, there could be no real nation and no citizenship. The term *citizen* had attained a definite meaning long before our fathers employed it in the Constitution. It implied a political society,—a nation,—of which the individual is a member, to which he owes allegiance, and which is bound to give him protection. Now, it is to be observed that, while the Constitution nowhere in terms defines the status of citizenship, or declares what persons shall be admitted thereto, it does assume its existence, and provide for all the consequences that flow from the relation; the general government has exclusive power to admit persons of foreign birth to that condition; while the article in relation to treason (Art. VI. Sec.

III.) recognizes the duty of allegiance, for the essence of the crime of treason is the violation of allegiance.

The Constitution implies the nationality of the government:—

D. *By providing for the ownership by the United States of all new, unappropriated public lands within the borders of the states and territories.* (Art. IV. Sec. III. § 2.) The King of Great Britain was held to be the ultimate owner of the soil, and the proprietor of all the domain not allotted to private holders. The United States succeeded to this title. During the Confederation, while the idea of nationality was not yet publicly admitted, the states separately ceded to the general government whatever title had been claimed by either of them to all unappropriated western lands, and only retained the proprietorship of land within their immediate territorial limits. This title the Constitution continued, and extended over all subsequent acquisitions by purchase or conquest. Nor does the ownership pass from the United States and vest in a particular state, when the latter becomes organized as a separate commonwealth, throws off its territorial character, and is admitted as a state into the Union; but the nation retains its property, and from it must all private purchasers derive their rights. This original and paramount dominion in the soil which may be added to the territory of the country, is a high attribute of sovereignty, the prerogative of an independent body politic, and not of a mere agent to carry on certain governmental acts.

The Constitution implies the nationality of the government:—

E. *In the essential character of the legislative powers conferred upon Congress.* It is plain that not the *number* but the *extent* of such powers gives to the government exerting them its national character. It is also plain that the powers of legislation which the Constitution confers upon the general government are of a much higher class, more imbued with the essential attributes of sovereignty than those which the state governments exercise; e. g.;—

The general government possesses the *exclusive* right to regulate commerce; to naturalize aliens; to coin money; to establish post-offices; to grant patent and copy rights; to declare war; to raise and support armies and navies and to govern the same.

Congress has further the *unlimited* power to lay taxes of all kinds—some to the exclusion of the states—as duties on imports; others in connection with the states. Finally the general government is to be sole judge of what particular measures are fit, proper and necessary in order to carry these general grants of power into proper execution.

The nationality of the government is implied:—

F. *In the essential nature of the powers conferred on the Executive.* These are attributes of independent sovereignty, conferable only by the political society in which that sovereignty resides.

The nationality of the government is implied:—

G. *In the essential character of the powers conferred upon the Judiciary.* Many of these are exclusively held by the courts of the nation,

and are commensurate with the *legislative* functions granted to the government; e. g.; The Supreme Court has jurisdiction in all cases arising under the Constitution, the laws of the United States and treaties made under their authority. It follows that state constitutions and laws, as well as acts of Congress may be reviewed, questioned, condemned, and declared null and void by the national judiciary.

The nationality of the government is implied:—

II. *In the provision of means by which the sovereign people may make amendments in their organic law.* (Art. V.)

In no particular has the change in our fundamental law been so radical as in respect to the interpretation given to this power of amendment. This must be shown later. It is sufficient to assert, at this point, that the intention of the majority, who agreed to present the Constitution of 1787 to the country, was to plan such a scheme as would just suffice to create a central authority with power enough to be actually a government; in contrast with the Congress of the Confederation. The power of amendment defined in Art. V. implied, in their view, no right of the amending states to *increase* the powers of the general government, or to give it authority over new subjects; but simply to modify the machinery of government otherwise provided for in the Constitution. *If Art. V. had been understood in* 1787 *as it is to-day, not a single one of the thirteen states would have accepted the Constitution.*

THE GOVERNMENT PROVIDED FOR BY THE CONSTITUTION WAS, SECOND, LOCAL.

The people unquestionably intended to authorize an administrative system incorporating in its purity, the idea of Local Self-Government, which they could trace back to the primitive customs of their Teutonic ancestors on the Elbe and the Weser. They accordingly established, as we have seen, a *national government* with *sovereign* powers, legislative, executive and judicial, within its sphere. At the same time the people authorized *state* governments with rights as complete and independent within their sphere, as those of the general government. The powers and functions intrusted to the central organization have a wider field of activity than those intrusted to the local commonwealths; but within their respective limits of operation, each class is uncontrolled by the other. The division of powers between the different departments of government was made as follows: Those affairs which are peculiarly national, which affect the body of citizens, are managed by the one central government or by the *general department of the one government.* Those affairs which are local, which affect the individual citizen in his private capacity abstracted from his relations to the whole political society, are managed by the *local department of the government*, or in other words, by the *separate state governments* found in existence and left in existence by the same Constitution.

The manner in which this distinction was drawn will appear sufficiently by interpretation:—First: of certain *constitutional limitations* upon the government; and second: of certain constitutional *grants of power.*

A. RELATION BETWEEN THE NATIONAL AND STATE GOVERNMENTS ILLUSTRATED BY CONSTITUTIONAL LIMITATIONS.

"When the Constitution was acted on by the states, five of them proposed amendments. These amendments did not contemplate a change in the government formed by the Constitution, but constituted a bill of rights. The Constitutional Convention had not considered it necessary to include a specific bill of rights in the Constitution, because its republican nature inferentially covered the ground. But the people at large had great respect for Magna Charta and the English bills of rights; hence when amendments containing some of the provisions of those instruments were proposed in the first Congress, they were adopted, and became an integral part of the Constitution."

The first ten Amendments were as follows:—

ARTICLE I.—FREEDOM OF RELIGION, ETC.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

(1. vid. Magna Charta, Sec. I, Taswell—Langmead, p. 110. 2. cf. Bill of Rights, Sec. 9, T—L. p. 656 and pp. 323-4. 3. cf. T—L. pp. 756 sq. 4. cf. T—L. p. 618)

ARTICLE II.—RIGHT TO BEAR ARMS.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

(Vid. Bill of Rights. Sec. 7. T—L, p. 656.)

ARTICLE III.—QUARTERING SOLDIERS ON CITIZENS.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war but in a manner to be prescribed by law.

(Vid. Petition of Right, Sec. VI. T—L. 547.)

ARTICLE IV.—SEARCH WARRANTS.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(Vid. T—L. 763. for decision or illegality of general warrants.)

ARTICLE V.—TRIAL FOR CRIME, ETC.

No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in active service in time of war or public danger; nor shall any person be subject for the same

offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(Cf. Petition of Right. Secs. III and VII. T—L. pp. 546–7. Bill of Rights, Secs. 11 and 12. T—L. p. 657.)

ARTICLE VI.—Rights of Accused Persons.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

(Cf. Magna Charta, Secs. 39 and 40. T—L. p. 128. Habeas Corpus Act, of 1679, T—L. 623 sq.)

ARTICLE VII.—Suits at Common Law.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

(Cf. Blackstone; Commentaries, Bk. III, 349. IV, 349, 414, 441.)

ARTICLE VIII.—Excessive Bail.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

(Cf. Bill of Rights, 10, T—L. 657.

ARTICLE IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not granted to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

For our present purpose, answers to the following questions are necessary; viz.:—Against the usurpations of *what power* do these provisions secure the citizens? Or, what amounts to the same thing:—Upon *what power* do these provisions impose restraints?

The questions may be put in concrete form thus:—Suppose the people of any state have omitted any of these restrictions in their *state* constitution; or suppose the people abolish certain of them; could any of the inhabitants of that state appeal to the national authorities, and bring these prohibitions of the national constitution to bear upon the local gov-

ernment? Suppose a state should abolish trial by jury in cases arising under its laws; suppose a state should abolish the right of its citizens to claim "just compensation" in all cases for their private property which the state had appropriated; suppose a state should adopt no prohibition of "excessive fines," or "cruel and unusual punishments:"—could the national law be brought to bear in the case?

The answer is that the general limitations contained in the United States Constitution and which have been quoted, have reference only to the national government and do not apply to the several states. So far, then, as the states did not infringe upon express provisions in the Constitution especially addressed to them, or upon those implied in the whole scope of that instrument and in the grants of power to the general government, they might regulate their own internal economy as seemed best to themselves. The *United States* were forbidden either by the legislative, executive or judicial departments, to deprive a person of any of the immunities and privileges guarded by the constitutional Bill of Rights. *The states might, in respect to their own inhabitants*, if consistent with their own organic laws, *infringe them all.*

The following cases illustrate the character of the Constitution of 1787 in this respect:—

Barron vs. the Mayor of Baltimore.

The city of Baltimore had taken the property of Barron without just compensation. A statute of the Maryland Legislature authorized the act. The case was carried to the United States Supreme Court. The decision, rendered by C. J. Marshall, was as follows:—

"The plaintiff contends that the case comes within that clause of the fifth amendment to the Constitution, which inhibits the taking of private property for public use without just compensation. He insists that this amendment, being in favor of the liberty of the citizen, ought to be so construed as to restrain the legislative power of a *state* as well as that of the United States. The question thus presented is, we think, of great importance, but not of much difficulty. The Constitution was ordained and established by the people of the United States for themselves, for their own government and not for the government of the individual states. Each state established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers to be conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and we think necessarily, applicable to the government created by this instrument. They are limitations of power granted in the instrument itself, not of distinct governments, framed by different persons, and for different purposes. If these propositions are correct, the fifth amendment must be understood as restraining the power of the *general government, not* as applicable to the states. In their several constitutions they have imposed such restrictions upon their respective governments as their wisdom suggested; such as they deemed most proper for themselves. It is a subject on which

they judge exclusively, and with which others interfere no farther than they are supposed to have a common interest."

BARKER VS. THE PEOPLE.

Barker had been indicted and convicted under a law of the state of New York. His offence was the sending of a challenge to fight a duel. The punishment awarded by the statute was that the party so convicted "*shall be incapable of holding, or being elected to, any post of profit, trust, or emolument, civil or military, under this state.*" The defendant (i. e. Barker, in the original trial before the state court) insisted that this statute was in derogation of that clause in the amendments to the *United States Constitution*, which forbids the infliction of cruel and unusual punishments. The court held that the *provision in question only regulates the legislative and judicial action of the United States and has no application to the punishment of crimes against a state.*

B. RELATION BETWEEN NATIONAL AND STATE GOVERNMENT ILLUSTRATED IN THE CASE OF CERTAIN GRANTS OF POWER.

(Cf. Pomeroy, 173 sq.)

1st. *Taxation.* (Cf. Art. I. Sec. VIII; Art. I. Sec. II. § 3; Art. I. Sec. IX. § 4, 5, 6; per contra, Art. I. Sec. X. § 2 and 3.)

The questions arise; "What powers of taxation are held by Congress?" and "What powers are held by the several states?"

In brief, the United States Government within its sphere of action is paramount, and the states are subordinate. Because the nation is thus paramount, its taxing power is supreme; it may be applied to all subjects; it may be exerted upon all individuals, and upon every species of property; and its demands must first be satisfied before the states can resort to the exercise of their functions.

On the other hand, the states, because they are bodies politic, have also the power to tax, which they may exert in all instances, upon all subjects, and in all methods, except so far as they are restrained by the national Constitution. This implied limitation involves two distinct features.
(1) *The state power to tax must be exercised second to that of the general government; in other words, the claims of the nation upon persons and property have priority, and must be satisfied even to the exclusion of those of the states.*
(2) *The state power cannot be exerted upon the property of the general government, or upon means which that government has adopted to carry on its affairs.*

These propositions are fully sustained by the following decisions of the Supreme Court:—

Congress had chartered the Bank of the United States, a branch of which was established at Baltimore. The legislature of Maryland passed an act which had the effect to lay a tax upon that branch. The question as to the validity of this tax was presented in—

McCULLOCH VS. THE STATE OF MARYLAND.

The state law, as it applied to the bank, was held to be unconstitutional and void. The opinion of the court, given by C. J. Marshall, is among the most instructive commentaries upon the nature of the government. It is reported that Wm. Pickering said of this opinion, that he saw in it a pledge of the immortality of the Union. The argument summarized is, that as the United States is paramount, all the means which it may lawfully adopt for carrying on public affairs are supreme and free from state legislation. As the state could not repeal or alter the charter of the bank, so it could not do any thing which tends to hinder or impair the efficiency of that institution. But the right to *tax*, implies the right to *destroy*; for if the state may tax at all, it may tax to such a degree as to prevent the operation of the bank; and any amount of taxation has that *tendency*.

The doctrine was applied under very different circumstances in the case of —

DOBBINS VS. THE COMMISSIONERS OF ERIE COUNTY.

A captain of a United States revenue cutter had been taxed in Pennsylvania upon his salary as a national officer. The sole question was as to the validity of the state tax; and the court unanimously held that it was void, as being beyond the power of the state to impose, because the states are "*under an implied prohibition of any action which shall conflict with the perfect execution of another sovereign power delegated to the United States.*" The court applied this principle to the salaries of officers under the general government.

The same construction of the Constitution has also been affirmed in a series of decisions, commencing in 1829, and applied to the stock and other public securities of the United States. In —

WESTON VS. THE CITY COUNCIL OF CHARLESTON,

The facts were as follows. The city council of Charleston, by virtue of an act of the South Carolina legislature, laid a tax upon all personal estates, especially including stocks of the United States. The plaintiff was assessed for certain of these stocks, and commenced proceedings to annul the assessment on the ground that the law, so far as it applied to such securities, was unconstitutional and void. The Supreme Court sustained the plaintiff's contention and annulled the assessment. The case actually decided that stocks of the United States owned by private persons or by corporations, cannot be taxed by the separate states. The grounds of the judgment were that the general government possesses the power to borrow money; that this power is supreme and paramount; that the states may not prevent, or do anything to interfere with its execution; that taxing the evidences of debt in the hands of owners would tend to have this effect by diminishing their value, and thus making persons less willing to loan money to the government.

The conclusions to be drawn from these and similar cases may be summarily stated as follows: *States may exert their power of taxation generally upon persons and property within their boundaries; but they may not thereby interfere with any function of the nation. They cannot tax national property; or the evidences of the national debt owned by individuals; or banks incorporated by the nation as a part of its general scheme of finance; or salaries of national officers.* In a word, all the means employed by the nation to carry on its legitimate functions are entirely beyond the reach of the several states.

On the other hand, Congress may tax any thing created by the separate states, which is property, or a franchise in the hands of individuals; state banks and all other corporations; state stocks and other securities in the hands of private owners; the proceedings in state courts. Nothing, certainly, exhibits in a stronger light the inherent distinction between the broad sphere of the national government and the narrow sphere of the state governments than this comparison between their respective powers of taxation.

2nd. *Power to Regulate Commerce.* "Congress shall have power . . . to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." "No preference shall be given, by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another."

What capacity to legislate on the subject of commerce resides, then, in the nation and in the states respectively?

The authoritative interpretations of the Constitution established the following propositions: —

(1.) The several states have power to pass laws regulating the internal police of their own territories, which territories include navigable rivers and harbors, as well as unnavigable streams and the land itself. These police measures are not, in any true sense of the term, regulations of commerce, although they may sometimes have direct reference to shipping, to the condition of harbors and other instruments by which commerce is carried on, or to the commodities themselves which are the objects of traffic. They are simply a part of the general system by which each state endeavors to protect the good morals, lives, health, persons, and property of its inhabitants. Thus, if a state legislature, deeming it dangerous to permit poisons to be sold without restriction, should pass a statute requiring a license from the druggist, or placing him under any other species of restraint, such law would be unobjectionable, although certain poisonous substances, such as *opium*, are chiefly or wholly the products of foreign countries, and therefore the objects of commerce. Again, most of the states have enacted statutes prohibiting the sale of spirituous liquors, except after compliance with certain statutory provisions. This entire class of statutes establishing police regulations is within the province of the states, whether Congress has legislated for the same or similar purposes or not. In this connection may be mentioned laws

establishing quarantine, licensing and controlling pilots, declaring the order in which ships shall come to wharves and docks, managing the internal order of harbors, licensing the sale of gunpowder and the like.

(2.) In respect to measures which are properly, though perhaps indirectly, regulations of Commerce, *if Congress, proceeding under the general power conferred upon it, has already legislated, the states are entirely deprived of any authority over the same subject matter;* they are entirely cut off from the exercise of the legislative function; the prior occupation of the field by the national legislature excludes any participation therein by the individual states. But if Congress has not legislated, the states are free to act; *their action, however, is not absolute and final; it is only conditional; it is liable to be superseded and displaced by the laws of Congress* if that body should see fit to exercise its power and regulate that particular subject. These positions are illustrated by the case :—

GIBBONS vs. OGDEN. (1824.)

The State of New York, by a statute of its legislature, gave to Robert R. Livingston and Robert Fulton the exclusive right to navigate all waters within the jurisdiction of the state with vessels propelled by steam, for a certain term of years. Gibbons, notwithstanding this statute, navigated the bay of New York with a steamer running between New York City and Elizabethport, New Jersey, which steamboat had been duly enrolled and licensed as a coasting vessel under the acts of the United States Congress regulating the coasting trade. Ogden, who had succeeded to the rights of Livingston and Fulton, commenced a suit in the New York courts to restrain this proceeding of Gibbons. The state courts having decided in favor of Ogden's claim, i. e. having held the statute of New York valid, an appeal was taken by Gibbons to the Supreme Court of the United States. The contention on the part of Gibbons was that the New York statute contravened the clause of the Constitution which confers upon Congress the power to regulate commerce among the states, and was therefore void. This proposition was denied by Ogden; and the issue thus raised was the only one to be decided by the court.

The opinion of the court, was delivered by C. J. Marshall, and is confessedly one of his masterpieces. It deserves the most careful study by all students of our Constitutional and civil polity.

(1.) *Extent of the power to regulate. How far exclusive.* After speaking of the meaning and nature of Commerce, and the sort of rules which Congress may legitimately ordain by virtue of the constitutional grant, the C. J. proceeds to meet the important question under consideration. He says :—

"We are now arrived at the inquiry, What is this power? It is a power to regulate; i. e. to prescribe the rules by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than those

prescribed in the Constitution. These are expressed in plain terms and do not affect the questions which arise in this case.

"But it has been urged with great earnestness, that although the power of Congress to regulate Commerce with foreign nations, and among the several states be co-extensive with the subject itself, and have no other limits than are prescribed by the Constitution, yet the states may severally exercise the same power within their respective jurisdictions. . . . The appellant (Gibbons) contends that the full power to regulate a given subject, implies the *whole* power and leaves no residuum; that a grant of the whole is incompatible with the existence of a right in another to any part of it."

The Chief Justice then proceeds to show that there is no analogy between the power of taxation and the power to regulate commerce as had been claimed by the defence. Congress has general power to tax; and yet it is universally admitted that the states may also tax. The reason is that the Constitution recognized states as bodies politic, and to their very existence, as such, the power to lay and collect taxes is absolutely essential, while the power to regulate commerce is not. No argument can, therefore, be drawn from the conceded concurrent power of the states to exercise the functions of taxation, in favor of a like concurrent jurisdiction over commerce.

Having disposed of this apparent analogy the C. J. proceeds:—

"In discussing the question whether this power is still in the states, in the case under consideration, we may dismiss from it the inquiry whether it is surrendered by the *mere grant* to Congress, or is retained until Congress shall exercise the power. We may dismiss that inquiry because the power *has* been exercised, and the regulations which Congress deemed it proper to make are now in full operation. The sole question is, can a state regulate commerce with foreign nations, and among the states *while Congress is regulating it?*"

Powers held by the states. How far they interfere with those held by Congress. The C. J. continues:—

"But the *inspection laws* are said to be regulations of commerce, and are certainly recognized in the Constitution as being passed in the exercise of a power remaining with the states. That inspection laws may have a remote and considerable influence on commerce will not be denied; but that a power to regulate commerce is the *source* from which the right to pass them is derived, cannot be admitted. The object of inspection laws is to improve the quality of articles produced by the labor of a country; to fit them for exportation, or, it may be, for domestic use. Such laws act upon a subject before it becomes an article of foreign commerce, or of commerce among the states, and prepare it for that purpose. They form a portion of that immense mass of legislation which embraces every thing within the territory of a state not surrendered to the general government; all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state, and those which respect turnpike roads, ferries etc., are component parts of this mass. No direct general power over these objects is granted to Congress and consequently they remain subject to state legislation. If the legislative power of the Union can reach them, it must be for national purposes; it must be where the power is expressly given for a special purpose, or is clearly incidental to some power which is expressly given.

"It is obvious that the government of the United States, in the exercise of its express powers,—that, for example, of regulating commerce with foreign nations and among the states,—may use *means* which may also be employed by a state in the exercise of its acknowledged powers,—that, for example, of regulating commerce within the state. If Congress license vessels to sail from one port to another in the same state, the act is supposed to be *necessarily incidental to the powers expressly granted to Congress*, and implies no claim of a direct power *to regulate the purely internal commerce of a state*, or to act directly on its system of police. So, if a state, in passing laws on subjects acknowledged to be within its control, shall adopt a measure of the same character with one which Congress may adopt, *it does not derive its authority from the particular power which has been granted, but from some other which remains with the state and may be executed by the same means*. All experience shows that the same measures, or measures scarcely distinguishable from each other, may flow from distinct powers; but this does not prove that the powers themselves are identical. Although the measures in their execution may sometimes approach each other so nearly as to be confounded, there are other situations in which they are sufficiently distinct to establish their individuality.

Conclusions of the Court. Proceeding to apply these general principles, the Chief Justice discusses and decides the following propositions:—

(1) That the laws of New York in question are in collision with the acts of Congress regulating the coast trade, which, being made in pursuance of the Constitution, are supreme: and the state laws must yield to that supremacy, even though enacted in pursuance of powers acknowledged to remain in the states. (2) That a license under the acts of Congress for regulating the coasting trade gives a permission to carry on that trade. (3) That the act of Congress applies to steam as well as to sailing vessels. *The decree appealed from was therefore unanimously reversed, and the statute of New York declared unconstitutional and void.*

The case thus quoted so fully, is one of the great landmarks of constitutional interpretation which have been placed along the course of our political history; the decision is one of those so fruitful in results that it may be said to contain within itself the germs of all future development.

Summary.

Such was the plan of government which the convention of 1787 offered for the acceptance of the people. We have anticipated the chronological order in expounding as above the spirit of the proposed government. In each of the states, the Constitution was met with criticism, objection, opposition. On the other hand, it was felt in every state that the choice was between adoption of the Constitution and abandonment of central authority altogether. The latter alternative meant anarchy, which was a greater evil than an objectionable form of government.

As we have seen, the people had, up to 1787, given their consent to the jurisdiction of *no* authority superior to the state governments.

There was no legal, constitutional power to restrain any state from withdrawing from the Confederation, and attempting to gain the recognition of foreign governments as an independent body-politic.

Instead of adopting this course, the people of the several states (*not the state governments*), voluntarily consented to a new system; they united their divided sovereignty; they created a general government over themselves collectively. When this was accomplished, (1789—90; Washington was inaugurated April 30, '89,) the United States, previously a nondescript political society, became a legally organized nation, with an adequately sanctioned organic law.

The most obvious change in the political situation ('89) appears in the fact that the American people had added to the thirteen sets of legislative, executive and judicial authorities which had hitherto governed the land piecemeal, a legislative, executive and judicial organization which, within its sphere, was supreme over every individual in the land, from New Hampshire to Georgia. State legislation still controlled such subjects as marriage, divorce, ownership and descent of lands, slavery, the execution and probating of wills, the administration of estates, the jurisdiction of local tribunals, and a thousand others of a similar nature; and the people consenting to the new form of government had no idea of creating a central authority which could by any possible legal procedure deprive the states of any part of this supremacy.

NOTE. The Constitution was ratified as follows:—

1.	By Delaware;	Dec. 3, 1787.
2.	" Pennsylvania;	" 13, "
3.	" New Jersey;	" 19, "
4.	" Georgia;	Jan. 2, 1788.
5.	" Connecticut;	" 9, "
6.	" Massachusetts;	Feb. 6, "
7.	" Maryland;	Apr. 28, "
8.	" South Carolina;	May 23, "
9.	" New Hampshire;	June 21, "
10.	" Virginia;	" 25, "
11.	" New York;	July, 26, "
12.	" North Carolina;	Nov. 21, 1789.
13.	" Rhode Island;	May 20, 1790.

PART III. THE CONSTITUTIONAL PERIOD.

Division I—The Constitution a Two-faced Idol, 1789—1801.

CHAPTER I.

POPULAR INTERPRETATION OF THE CONSTITUTION.

Did the people *mean* all that was involved in the Constitution as above explained? It is one thing to prove that a given political system, to be consistent with itself, must imply certain relations; it is another thing to prove that the people who created the system recognized that logical necessity and willed corresponding consistency. Few historical propositions are more variously and conclusively demonstrable than that *neither the Declaration of Independence nor the Constitution was intended by the people as a proclamation of nationality in the sense since established.* "The Constitution had been extorted from the grinding necessity of a reluctant people." Lawyers, and judges, and legislators and executives necessarily interpreted it according to legal canons, and we have reviewed some of their conclusions. The historian must also consider the letter of the law; but his chief concern is with its spirit, as shown in the attitude of the sanctioners of the law. The Constitution meant then, according to this criterion, hardly more than that *between the alternatives of anarchy and a plan of co-operation which satisfied nobody, the people chose to try the latter.* The adoption of the Constitution was not, therefore, a consummation, but a beginning. It was the formal announcement that the immemorial struggle between *libertas* and *imperium* had commenced on a new field. A people hereditarily suspicious of government had confronted the political and economic necessity of establishing government. The two ideas, on the one hand, that *mistrust of government is the corner-stone of freedom*, on the other hand that *strong government is the prime condition of freedom* were the co-ordinate moral forces which began to direct the course of our national development. The Constitution was not the triumph of one of these forces which had annihilated the other; it was the resultant of these two, each remaining as mighty as before, and a third, namely, the instinct of self-preservation. The wise words of the fundamental law did not exorcise the spirit of localism. The State Sovereignty folly struggled resolutely for its rights of primogeniture until it expired of anachronism in our war for the establishment of Nationality in 1861.

"It devolved upon the *Federalists*, to whose efforts it was due that a constitution with the capacity to live was substituted for the Articles of

Confederation, to put this Constitution into operation." The country prospered under the new government. The masses of the people were more and more inclined to attribute this prosperity to the Constitution itself. The anti-Federalists who had opposed the adoption of the Constitution with every means in their power, now changed their policy to commendation of the Constitution, which proved so useful; but they violently denounced the Federalists for alleged selfish and unpatriotic administration.

We see in this change of front on the part of the anti-Federalists, the beginning of the worship of the Constitution. "At first it was looked upon as the best possible Constitution for the United States. By degrees it came to be popularly regarded as a masterpiece, applicable to *every* country. The Constitution became the political Bible of the people. The wilder the war of tongues, the more violent the partizanship of opposing leaders, the louder was the cry "The Constitution!" raised on every side, and the more energetically did every one swear not to deviate from it, even by a hair's breadth." (Von Holst.)

As just remarked, the anti-Federalists soon began to carry on their opposition to the party in power, *under the pretension of struggling to save the Constitution from false friends.* Experience had taught the leaders that these tactics would insure them the readier and more energetic support of the masses of the people. The Federalists were thus obliged to change their tone also. At first, part of them took the position which Hamilton had taken, and saw in the Constitution the best that could be accomplished under the circumstances. Others professed themselves satisfied because it was free from the essential defects of the Articles of Confederation. Nearly all of the Federalists were far removed from unconditional admiration. Their entire struggle for its ratification was hardly more than a defence against unjust attacks. They lavished little praise on the Constitution, and that usually in the form of a comparison with the Articles of Confederation."

"But political expediency compelled the Federalists to wheel into line as admirers of the fundamental law. Their adherents among the masses could not understand how they could be cool critics of the Constitution they had themselves planned, the adoption of which was due solely to their efforts, while the anti-Federalists were preparing a shrine for it on the high altar of the temple of freedom."

No decade passed, from 1789 to 1861, when the possibility of a dissolution of the union did not assume the form of a more or less threatening probability; but in every instance the party of disunion proclaimed itself the party of constitutionality, and denounced the opposing party as revolutionists prostituting the Constitution to purposes of oppression. The leaders of the southern rebellion in 1861, (e. g. Jefferson Davis and Alex. H. Stevens) have, since the war, published elaborate arguments to prove that they were acting in strict accordance with the real meaning of the Constitution, and that the government of the Union revolutionized the fundamental law.

Thus, after the adoption of the Constitution, the contention between the centralizing and the localizing party, resolved itself into a battle of dialectics. The fallacy behind the arguments of both parties is in the presumption that the political character of the people of America was to be irrevocably settled by grammatical and logical and legal interpretation of certain documents. The zeal of both parties for verbal criticism of the Declaration of Independence and the Constitution, had its impulse in the latent idea that there was in those documents, altogether apart from the actual will of the people who created them, an intrinsic authority. The aim of political reasoners was, accordingly, not to show the people what their political relations *ought* to be, and what interpretation they should will into their Constitution; but they argued endlessly to show what their political character *must* be, because of the existence of a Constitution to which they were committed, and by which they were bound, whether it expressed the public will or not. That this conception was the major premise of both popular and congressional arguments from 1789 to 1861, showed how imperfectly the people, and perhaps the leaders, comprehended the nature of republican institutions. The Constitution was, to "loose constructionists" and "strict constructionists" alike, in spite of their declamations about freedom, either a fetich, or the edict of some mightier Soliman.

CHAPTER II.

THEORIES OF THE CONSTITUTION.

(Pomeroy: Constitutional Law, Secs. 27 sq.)

This apparent anomaly is explained by the fact that, from the beginning, two radically different views of the Constitution prevailed.

1. *The National View.*

(a.) The United States is a *nation*, and its Constitution is the organic, fundamental law of that nation.

(b.) This *nation*, or in other words the *collective people of the United States*, as a political unit, existed prior to the adoption of the Constitution, and was not therefore called into being as a consequence of that instrument.

(c.) The Constitution was not the work of the separate states, regarding those states simply as organized governments; nor of the peoples of those states, regarding those peoples as separate and independent sovereign aggregates or communities; but it was the work of the *people of the United States* as a whole—as a political unit,—not voting together, it is

true, in the process of adoption, as a consolidated mass of electors, but for reasons of policy and convenience, acting in their respective commonwealths.

(d.) As a necessary consequence, the powers held by the general government were not delegated to it by the several states, regarding those states simply as organized governments; nor by the peoples of the several states, regarding those peoples as separate and independent sovereign aggregates or communities; but were delegated to it by the *people of the United States* as a whole, abstracted from their local relations to the various commonwealths of which they were also members; although in the very process of delegation, this one people did not vote together as a consolidated mass of electors, but, for certain reasons of policy and convenience, acted in their respective states.

(e.) The powers *not* thus granted by the people of the United States to its general government were not reserved *by* the several states *to* themselves; for, as these states, as such, did not *grant* any powers, they could not *reserve* any. But they were reserved *by* the people of the United States *to* themselves, or *to* the several states.

(f.) Thus the *people of the United States*, as a nation, is the ultimate source of all power, both that conferred upon the general government, that conferred upon each state as a separate political society, and that retained by themselves.

2. *The State Sovereignty Theory*:—(a.) Denies that the United States are now, or ever were, in any true sense of the term, a *nation*. It declares that by the revolt of the colonies, there resulted thirteen independent and sovereign states or nations; that these thirteen states retained their separate sovereignty during the Confederation, and that they did not resign this high attribute under the present Constitution.

(b.) It does not regard that Constitution as an organic and fundamental law for a single body-politic, but as a compact, as an instrument in the nature of a league, treaty, or articles of association between the separate, independent sovereign states.

(c.) It represents these sovereign states as granting or delegating a portion of the powers of sovereignty which they possessed, to the government of the United States, which they had thus constituted as a limited agent, for all and for each of them, to fulfill certain well defined duties, and assume certain well understood functions, which this agent could advantageously fulfil and assume.

(d.) As a consequence, this agent—the general government—possesses no powers but those given in express terms, or by implication absolutely necessary. Nor has it the capacity by itself, or by any of its departments,—legislative, executive or judicial,—to decide, with authority, and as a finality, the extent of those delegated powers; but the sole capacity to determine this most momentous question rests with each particular state for itself. In the practical operation of this capacity of determination, no state is in the least bound by act of Congress, order of President, judgment of Supreme Court, or even by the decision of its

sister commonwealths, but may judge finally and conclusively for itself.

(e.) As a further consequence of this inherent capacity of determination, any state, after it has authoritatively decided that the general government has transcended its proper limits, has assumed and exercised functions not belonging to it, may treat the compact as broken, the trust as forfeited, the agency as ended; it may then retire from the confederacy, thus resuming all the powers which it had delegated to the United States.

(f.) Lastly, as the several independent, sovereign states were the principals which intrusted a portion of their attributes to the general government, they reserved to themselves the residuum not thus expressly parted with; they are, therefore, in theory and in fact, the source of all political functions both of themselves and of the United States. We are, then, not one nation, one people, but an assemblage of nations, united for some specific purposes by a friendly league into a loose confederation. No citizen, therefore, owes allegiance to the United States, as Mr Mason of Virginia observed in the Senate; but each person owes allegiance only to the state of which he is a member.

While neither of these two formulas expresses the exact views of each individual in the party whose general position it represents, they embody, as correctly as possible, the dogmas of the two leading schools of political thought.

The first theory was more nearly in accord with the *letter of the Constitution*. The second theory was more nearly in accord with *the facts about the method of adoption, the spirit of the people at the time of adoption, and their intention in the adoption of the Constitution*. The history of the United States from 1789 to 1865 is the history of a progress from a state of popular opinion represented by this second theory, to a state of popular opinion which expresses itself in the most natural interpretation of the Constitution of 1787.

CHAPTER III.

NATIONAL AND ANTI-NATIONAL TENDENCIES ILLUSTRATED BY EARLY FINANCIAL DIFFERENCIES.

(Vid. Johnston, American Politics, p. 21, and Von Holst, vol. 1, pp. 80—88.)

Washington made Alexander Hamilton Secretary of the Treasury. "January 9th, 1790, Hamilton offered his famous *Report on the Settlement of the Public Debt*. It consisted of three recommendations. (1) that the *foreign* debt of the Confederation should be assumed by the

United States and paid in full; (2) that the *domestic* debt of the Confederation, which had fallen far below par, and had become a synonym fot worthlessness, should also be paid at par value; (3) that the debts incurred by the *States* during the revolution, and still unpaid, should be assumed and paid in full by the Federal Government.

"Hamilton's *first recommendation* was adopted unanimously. The *second* was opposed even by many *moderate* anti-Federalists, on the ground that the domestic debt was held by speculators, who had bought it at a heavy discount, and would thus gain usurious interest on their investment." Hamilton wished not only to commit the government to the payment of just debts, but he desired the adoption of that policy as a measure of political expediency. He wanted to carry out a financial policy which should strengthen the government. He was not merely an honest and patriotic financier, but the most determined of Federalists; and if political honesty had been out of the question, the value of the proposed measures as bulwarks of the principle of centralization would have been, in his view, ample reason for pressing them. He and his supporters argued that the securities of the Confederation should be paid in full as a demonstration to the people that it was unwise to distrust the government of the United States. After long debate, the second recommendation was also adopted.

Hamilton's third recommendation involved a question of the powers of the national government, but it was by no means discussed or decided on its merits as a speculative issue. The local selfishness of the northern and southern sections of the country appears in sharp distinction during the debate. The abstract question of allowing or denying to the central government broad powers was not separated from other considerations which really determined the fate of the measure. Hamilton's opponents—chiefly from the South—argued that too great a burden would be thus laid on the people; that the state debts could not, with justice, be saddled upon the United States; that it would be unfair, in largely benefiting some states without aiding others, some of which were the most deserving of all. Local feeling ran high, because nobody was blind to the political, any more than to the financial, bearing of the proposal. The opposition feared that the Union would be transformed from a "rope of sand" to a self-sufficient power. What the opposition feared, Hamilton *intended*. The third recommendation was carried by a vote of 31 to 26 in the House.

A few days later, however, the anti-Federalists received a reinforcement of seven newly arrived North Carolina members. The third resolution was at once reconsidered and voted down by a majority of two. The master-stroke with which Hamilton nevertheless accomplished his purpose, shows the pettiness of the motives partially disguised by high sounding declamations about principles. The northern states bought the consent of the South to the Constitution by tacitly consenting to slavery. The South now sold out its immediate interest in the principle of state sovereignty for a much smaller mess of pottage. "A

national capital was to be selected. The Federalists agreed to vote that it should be fixed upon the Potomac river, after remaining ten years in Philadelphia, and two anti-Federalist members from Virginia agreed in return to vote for the third resolution, which was then finally adopted. The effect was to appreciate the credit of the United States and to enrich the holders of the continental debts. In strengthening the bonds of nationality, it was also most potent. It made Hamilton so hateful to the anti-Federalists, however, that his party never ventured to nominate him for any elective office."

"Outside of Congress, the opposition immediately gave full rein to their anger. In North Carolina and Georgia, the malcontents declaimed with special emphasis. In Maryland, the question was agitated by the Legislature. A resolution declaring the *independence of the state governments* to be jeopardized by the assumption of the state debts by the Union was rejected only by the casting vote of the Speaker. In Virginia, the two houses of the Legislature sent a joint memorial to Congress. They expressed the hope that the Funding Act would be reconsidered, and that the law providing for the assumption of the state debts would be repealed. A *change in the present form* of the government of the Union, ominous of disaster, would, it was said, be the consequence of the last act named, which the House of Delegates had formerly declared to be in violation of the Constitution of the United States.

These resolutions of the House of Delegates of Virginia drew from Hamilton the prophetic utterance, "*This is the first symptom of a spirit which must either be killed or which will kill the Constitution of the United States.*" The spirit was not "killed." It was not even mastered, until, in 1865, the most destructive civil war in history was ended.

CHAPTER IV.

NATIONAL AND ANTI-NATIONAL TENDENCIES ILLUSTRATED BY THE VIRGINIA AND KENTUCKY NULLIFICATION EPISODE.

Under the administration of John Adams (1798–1801), the country was on the verge of war with France, over commercial relations. In the height of the war feeling, the Federalists, intoxicated by the possession of unrestrained power, and hurried on by an instinctive passion for strong government, passed two acts which went far to convince the masses that the party in power was not fit to rule, because it was usurping powers not granted by the Constitution. The administration wished to defend itself against enemies in the rear before attacking a foreign foe. The means adopted were the death warrant of the party.

January 25th, 1798, the so-called *Alien Law* was passed; as follows:—

AN ACT CONCERNING ALIENS.

SECTION I. *Be it enacted by the Senate and House of Representatives of the United States in Congress assembled:* That it shall be lawful for the President of the United States, at any time during the continuance of this act, to *order* all such *aliens* as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States within such time as shall be expressed in such order, which order shall be served on such alien by delivering him a copy thereof, or leaving the same at his usual abode, and returned to the office of the Secretary of State, by the marshal or other person to whom the same shall be directed. And in case any alien, so ordered to depart, shall be found at large within the United States after the time limited in such order for his departure, and not having obtained a *licence* from the President to reside therein; or, having obtained such *licence*, shall not have conformed thereto, every such alien shall, on conviction thereof, be imprisoned for a term not exceeding three years, and shall never after be admitted to become a citizen of the United States. *Provided always, and be it further enacted*, that if any alien so ordered to depart shall prove to the satisfaction of the President, by evidence to be taken before such person or persons as the President shall direct, who are for that purpose hereby authorized to administer oaths, that no injury or danger to the United States will arise from suffering such alien to reside therein; the President of the United States may grant a licence to such alien to remain within the United States for such time as he shall judge proper, and at such place as he may designate. And the President may also require of such alien to enter into a bond to the United States, in such penal sum as he may direct, with one or more sufficient sureties, to the satisfaction of the person authorized by the President to take the same, conditioned for the good behavior of such alien during his residence in the United States, and not violating his licence, which licence the President may revoke whenever he shall think proper.

SECTION 2. *And be it further enacted*, That it shall be lawful for the President of the United States, whenever he may deem it necessary for the public safety, to order to be removed out of the territory thereof, any alien who may or shall be in prison in pursuance of this act; and to cause to be arrested and sent out of the United States such of those aliens as shall have been ordered to depart therefrom and shall not have obtained a licence as aforesaid, in all cases where, in the opinion of the President, the public safety requires a speedy removal. And if any alien, so removed or sent out of the United States by the President, shall voluntarily return thereto, unless by permission of the President

of the United States, such alien, on conviction thereof, shall be imprisoned so long as, in the opinion of the President, the public safety may require.

SECTION 3. *And be it further enacted*, That every master or commander of any ship or vessel which shall come into any port of the United States after the first day of July next, shall immediately on his arrival make report in writing to the collector or other chief officer of the customs at such port, of all aliens, if any, on board his vessel, specifying their names, age, the place of nativity, the country from which they shall have come, the nation to which they belong and owe allegiance, their occupation and a description of their persons, as far as he shall be informed thereof; and on failure, every such master or commander shall forfeit and pay three hundred dollars, for the payment whereof, on default of such master or commander, such vessel shall also be holden, and may, by such collector or other officer of the customs, be detained. And it shall be the duty of such collector or other officer of the customs forthwith to transmit to the office of the department of state true copies of all such returns.

SECTION 4. *And be it further enacted*, That the Circuit and District Courts of the United States shall respectively have cognizance of all crimes and offences against this act. And all marshals and other officers of the United States are required to execute all precepts and orders of the President of the United States, issued in pursuance or by virtue of this act.

SECTION 5. *And be it further enacted*, That it shall be lawful for any alien who may be ordered to be removed from the United States, by virtue of this act, to take with him such part of his goods, chattels or other property as he may find convenient; and all property left in the United States by any alien who may be removed, as aforesaid, shall be and remain subject to his order and disposal, in the same manner as if this act had not been passed.

SECTION 6. *And be it further enacted*, That this act shall continue and be in force for and during the term of two years from the passing thereof.

Approved June 25, 1798.

July 14th, the so-called *Sedition Law* was passed, as follows:—

AN ACT IN ADDITION TO THE ACT ENTITLED "AN ACT FOR THE PUNISHMENT OF CERTAIN CRIMES AGAINST THE UNITED STATES."

SECTION 1. *Be it enacted &c.*, That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty; and if any person or

There was no legal, constitutional power to restrain any state from withdrawing from the Confederation, and attempting to gain the recognition of foreign governments as an independent body-politic.

Instead of adopting this course, the people of the several states (*not the state governments*), voluntarily consented to a new system; they united their divided sovereignty; they created a general government over themselves collectively. When this was accomplished, (1789—90; Washington was inaugurated April 30, '89,) the United States, previously a nondescript political society, became a legally organized nation, with an adequately sanctioned organic law.

The most obvious change in the political situation ('89) appears in the fact that the American people had added to the thirteen sets of legislative, executive and judicial authorities which had hitherto governed the land piecemeal, a legislative, executive and judicial organization which, within its sphere, was supreme over every individual in the land, from New Hampshire to Georgia. State legislation still controlled such subjects as marriage, divorce, ownership and descent of lands, slavery, the execution and probating of wills, the administration of estates, the jurisdiction of local tribunals, and a thousand others of a similar nature; and the people consenting to the new form of government had no idea of creating a central authority which could by any possible legal procedure deprive the states of any part of this supremacy.

NOTE. The Constitution was ratified as follows:—

1.	By Delaware;	Dec. 3, 1787.
2.	" Pennsylvania;	" 13, "
3.	" New Jersey;	" 19, "
4.	" Georgia;	Jan. 2, 1788.
5.	" Connecticut;	" 9, "
6.	" Massachusetts;	Feb. 6, "
7.	" Maryland;	Apr. 28, "
8.	" South Carolina;	May 23, "
9.	" New Hampshire;	June 21, "
10.	" Virginia;	" 25, "
11.	" New York;	July, 26, "
12.	" North Carolina;	Nov. 21, 1789.
13.	" Rhode Island;	May 20, 1790.

PART III. THE CONSTITUTIONAL PERIOD.

Division I—The Constitution a Two-faced Idol, 1789—1801.

CHAPTER I.

POPULAR INTERPRETATION OF THE CONSTITUTION.

Did the people *mean* all that was involved in the Constitution as above explained? It is one thing to prove that a given political system, to be consistent with itself, must imply certain relations; it is another thing to prove that the people who created the system recognized that logical necessity and willed corresponding consistency. Few historical propositions are more variously and conclusively demonstrable than that *neither the Declaration of Independence nor the Constitution was intended by the people as a proclamation of nationality in the sense since established.* "The Constitution had been extorted from the grinding necessity of a reluctant people." Lawyers, and judges, and legislators and executives necessarily interpreted it according to legal canons, and we have reviewed some of their conclusions. The historian must also consider the letter of the law; but his chief concern is with its spirit, as shown in the attitude of the sanctioners of the law. The Constitution meant then, according to this criterion, hardly more than that *between the alternatives of anarchy and a plan of co-operation which satisfied nobody, the people chose to try the latter.* The adoption of the Constitution was not, therefore, a consummation, but a beginning. It was the formal announcement that the immemorial struggle between *libertas* and *imperium* had commenced on a new field. A people hereditarily suspicious of government had confronted the political and economic necessity of establishing government. The two ideas, on the one hand, that *mistrust of government is the corner-stone of freedom*, on the other hand that *strong government is the prime condition of freedom* were the co-ordinate moral forces which began to direct the course of our national development. The Constitution was not the triumph of one of these forces which had annihilated the other; it was the resultant of these two, each remaining as mighty as before, and a third, namely, the instinct of self-preservation. The wise words of the fundamental law did not exorcise the spirit of localism. The State Sovereignty folly struggled resolutely for its rights of primogeniture until it expired of anachronism in our war for the establishment of Nationality in 1861.

"It devolved upon the *Federalists*, to whose efforts it was due that a constitution with the capacity to live was substituted for the Articles of

sion, either foreign or domestic, and that they will support the government of the United States, in all measures warranted by the former.

That this Assembly most solemnly declares a warm attachment to the union of the states, to maintain which it pledges its powers; and that for this end it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that union, because a faithful observance of them can alone secure its existence and the public happiness.

That this Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government, as resulting from the compact, to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states which are parties thereto have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights and liberties appertaining to them.

That the General Assembly doth also express its deep regret that a spirit has, in sundry instances, been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued), so as to destroy the meaning and effect of the particular enumeration, which necessarily explains and limits the general phrases; and so as to consolidate the states by degrees into one sovereignty, the obvious tendency and inevitable consequence of which would be, to transform the present republican system of the United States into an absolute, or at least a mixed, monarchy.

That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution in the two late cases, the "Alien and Sedition Acts," passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government, which, by uniting legislative and judicial powers to those of elective, subverts the general principles of free government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises in like manner a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto; a power which, more than any other, ought to produce universal alarm, because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

That this state having, by its convention which ratified the Federal Constitution, expressly declared "that, among other essential rights, the liberty of conscience and the press cannot be cancelled, abridged, restrained or modified by any authority of the United States," and from its extreme anxiety to guard these rights from every possible attack of sophistry and ambition, having, with other states, recommended an amendment for that purpose,—which amendment was in due time annexed to the Constitution,—it would mark a reproachful inconsistency and criminal degeneracy, if an indifference were now shewn to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

That the good people of this commonwealth, having ever felt and continuing to feel the most sincere affection for their brethren of the other states, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship and the instrument of mutual happiness: the General Assembly doth solemnly appeal to the like dispositions of the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional, and that the necessary and proper measures will be taken by each for co-operating with this state in maintaining unimpaired the authorities, rights and liberties reserved to the states respectively, or to the people.

That the Governor be desired to transmit a copy of the foregoing resolutions to the executive authority of each of the other states, with a request that the same may be communicated to the legislature thereof.

And that a copy be furnished to each of the Senators and Representatives representing this state in the Congress of the United States.

Attest JOHN STEWART, C. H. D.

1798, December the 24th.

Agreed to by the Senate.

H. BROOKE, C. S.

KENTUCKY RESOLUTIONS OF 1798.

I. *Resolved*, that the several states comprising the United States of America are not united on the principle of unlimited submission to their General Government; but that by a compact under the style and title of a Constitution for the United States and of amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving each state to itself, the residuary mass of right to their own self government; and that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force: That to this compact each state acceded as a state, and is an integral party, its co-states forming as to itself, the other party: That the Government created by this compact was not made the exclusive or final *judge* of the extent of the

powers delegated to itself; since that would have made its discretion and not the constitution, the measure of its powers; but that as in all other cases of compact among parties having no common Judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

II. *Resolved*, That the Constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the High Seas, and offences against the laws of nations, and no other crimes whatever, and it being true as a general principle, and one of the amendments to the Constitution having also declared, "That the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people," therefore also the same act of Congress passed on the 14th day of July, 1798, and entitled "An act in addition to the act entitled an act for the punishment of certain crimes against the United States;" as also the act passed by them on the 27th day of June, 1798, entitled "An act to punish frauds committed on the Bank of the United States" (and all other their acts which assume to create, define, or punish crimes other than those enumerated in the Constitution) are altogether void and of no force, and that the power to create, define, and punish such other crimes is reserved, and of right appertains solely and exclusively to the respective states, each within its own territory.

III. *Resolved*, That it is true as a general principle, and is expressly declared by one of the amendments to the Constitution that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states are reserved to the states respectively or to the people;" and that no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, nor prohibited by it to the states, all lawful powers respecting the same did of right remain and were reserved to the states, or to the people: That thus was manifesited their determination to retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use should be tolerated rather than the use be destroyed; and thus also they guarded against all abridgement by the United States of the freedom of religious opinions and exercises, and retained to themselves the right of protecting the same, as this state, by a law passed on the general demand of its citizens, had already protected them from all human restraint or interference: And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution, which expressly declares that "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof, or abridge the freedom of speech or of the press," thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, inso-

much that whatever violates either throws down the sanctuary which covers the others, and that libels, falsehoods, defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals. That therefore the act of the Congress of the United States, passed on the 14th day of July, 1798, entitled "An Act in addition to the act for the punishment of certain crimes against the United States," which does abridge the freedom of the press, is not law, but is altogether void and of no effect.

IV. *Resolved*, That alien friends are under the jurisdiction and protection of the laws of the state wherein they are; that no power over them has been delegated to the United States, nor prohibited to the individual states distinct from their power over citizens; and it being true, as a general principle, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, nor prohibited to the states, are reserved to the states respectively, or to the people," the act of the Congress of the United States, passed the 22d day of June, 1798; entitled "An act concerning aliens," which assumes power over alien friends not delegated by the Constitution, is not law, but is altogether void and of no force.

V. *Resolved*, That in addition to the general principle as well as the express declaration, that powers not delegated are reserved, another and more special provision inferred in the Constitution, from abundant caution has declared, "that the migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress, prior to the year 1808." That this commonwealth does admit the migration of alien friends described as the subject of the said acts concerning aliens; that a provision against prohibiting their migration, is a provision against all acts equivalent thereto, or it would be nugatory; that to remove them when migrated is equivalent to a prohibition of their migration, and is, therefore, contrary to the said provision of the Constitution, and void.

VI. *Resolved*, that the imprisonment of a person under the protection of the laws of this commonwealth on his failure to obey the simple order of the President to depart out of the United States, as is undertaken by the said act, entitled, "An act concerning aliens," is contrary to the Constitution, one amendment in which has provided, that "no person shall be deprived of liberty without due process of law," and, that another having provided, "that in all criminal prosecutions, the accused shall enjoy the right to a public trial by an impartial jury, to be informed as to the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense," the same act undertaking to authorize the President to remove a person out of the United States who is under the protection of the law, on his own suspicion, without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favor, with-

out defense, without counsel, is contrary to these provisions also of the Constitution, is therefore not law, but utterly void and of no force.

That transferring the power of judging any person who is under the protection of the laws, from the courts to the President of the United States, as is undertaken by the same act concerning aliens, is against the article of the Constitution which provides, that "the judicial power of the United States shall be vested in the courts, the judges of which shall hold their office during good behavior" and that the said act is void for that reason also; and it is further to be noted that this transfer of judiciary power is to that magistrate of the general government who already possesses all the executive, and a qualified negative in all the legislative powers.

VII. *Resolved*, That the construction applied by the general government (as is evident by sundry of their proceedings,) to those parts of the Constitution of the United States which delegate to Congress power to lay and collect taxes, duties, imposts, excises; to pay the debts, and provide for the common defense and general welfare of the United States, and to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or any department thereof, goes to the destruction of all the limits prescribed to their power by the Constitution: That words meant by that instrument to be subsidiary only to the execution of the limited powers, ought not to be so construed as themselves to give unlimited powers, nor a part so to be taken as to destroy the whole residue of the instrument: That the proceedings of the general government under color of those articles, will be a fit and necessary subject for revisal and correction at a time of greater tranquility, while those specified in the preceding resolutions call for immediate redress.

VIII. *Resolved*, That the preceding resolutions be transmitted to the Senators and Representatives in Congress from this commonwealth, who are enjoined to present the same to their respective Houses, and to use their best endeavors to procure at the next session of Congress a repeal of the aforesaid unconstitutional and obnoxious acts.

IX. *Resolved, lastly*, That the governor of this commonwealth be, and is hereby authorized and requested to communicate the preceding resolutions to the legislatures of the several states, to assure them that this commonwealth considers union for special national purposes, and particularly for those specified in their late federal compact, to be friendly to the peace, happiness and prosperity of all the states; that, faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation; that it does also believe, that to take from the states all the powers of self-government, and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these states; and that, therefore, this

commonwealth is determined, as it doubts not its co-states are, to submit to undelegated and consequently unlimited powers in no man or body of men on earth; that if the acts before specified should stand, these conclusions would flow from them: that the general government may place any act they think proper on the list of crimes and punish it themselves, whether enumerated or not enumerated by the Constitution as cognizable by them; that they may transfer its cognizance to the president or any other person, who may himself be the accuser, counsel, judge, and jury, whose suspicions may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction; that a very numerous and valuable description of the inhabitants of these states, being by this precedent reduced as outlaws to the absolute dominion of one man and the barriers of the Constitution thus swept from us all, no rampart now remains against the passions and the power of a majority of Congress, to protect from a like exportation or other grievous punishment the minority of the same body, the legislatures, judges, governors, and counsellors of the states, nor their other peaceable inhabitants who may venture to reclaim the constitutional rights and liberties of the states and people, or who, for other causes, good or bad, may be obnoxious to the view or marked by the suspicions of the president, or be thought dangerous to his or their elections or other interests, public or personal; that the friendless alien has been selected as the safest subject of a first experiment; but the citizen will soon follow, or rather has already followed; for already has a sedition act marked him as a prey; that these and successive acts of the same character unless arrested on the threshold, may tend to drive these states into revolution and blood, and will furnish new calumnies against republican governments, and new pretexts for those who wish it to be believed, that man cannot be governed but by a rod of iron; that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights; that confidence is everywhere the parent of despotism; free government is found in jealousy and not in confidence; it is jealousy and not confidence which prescribes limited constitutions to bind down those whom we are obliged to trust with power; that our Constitution has accordingly fixed the limits to which, and no further, our confidence may go; and let the honest advocate of confidence read the alien and sedition acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits? Let him say what the government is, if it be not a tyranny, which the men of our choice have conferred on the president, and the president of our choice has assented to and accepted over the friendly strangers, to whom the mild spirit of our country and its laws had pledged hospitality and protection; that the men of our choice have more respected the bare suspicions of the president than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice. In questions of power, then, let no more be said of

confidence in man, but bind him down from mischief by the chains of the Constitution. That this commonwealth does therefore call on its co-states for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes hereinbefore specified, plainly declaring whether these acts are or are not authorized by the federal compact. And it doubts not that their sense will be so announced as to prove their attachment to limited government, whether general or particular, and that the rights and liberties of their co-states will be exposed to no dangers by remaining embarked on a common bottom with their own; but they will concur with this commonwealth in considering the said acts as so palpably against the Constitution as to amount to an undisguised declaration, that the compact is not meant to be the measure of the powers of the general government, but that it will proceed in the exercise over these states of all powers whatsoever. That they will view this as seizing the rights of the states, and consolidating them in the hands of the general government, with a power assumed to bind the states (not merely in cases made federal) but in all cases whatsoever, by laws made, not with their consent, but by others against their consent; that this would be to surrender the form of government we have chosen, and live under one deriving its powers from its own will, and not from our authority; and that the co-states recurring to their natural rights in cases not made federal, will concur in declaring these void and of no force, and will each unite with this commonwealth in requesting their repeal at the next session of Congress.

Approved Nov. 19, 1798.

THE KENTUCKY RESOLUTIONS OF 1799.

The Kentucky House of Representatives, according to the standing order of the day, resolved itself into a committee of the whole, on the state of the commonwealth. (Nov. 14, 1799.) After some time spent in debate, the committee of the whole rose and reported to the House that it had considered various resolutions passed by state legislatures on the subject of the Alien and Sedition Laws, and had determined to recommend the following, which was *unanimously* agreed to by the House: —

The representatives of the good people of this commonwealth, in General Assembly convened, having maturely considered the answers of sundry states in the Union to their resolutions, passed the last session, respecting certain unconstitutional laws of Congress, commonly called the Alien and Sedition Laws, would be faithless indeed to themselves, and to those they represent, were they silently to acquiesce in the principles and doctrines attempted to be maintained in all those answers, that of Virginia only accepted. To again enter the field of argument, and attempt more fully or forcibly to expose the unconstitutionality of those obnoxious laws, would, it is apprehended, be as unnecessary as unavailing. We cannot however, but lament that, in the discussion of those interesting subjects by sundry of the legislatures of our sister states, un-

founded suggestion and uncandid insinuations, derogatory to the true character and principles of this commonwealth, have been substituted in place of fair reasoning and sound argument. Our opinions of these alarming measures of the general government, together with our reasons for those opinions, were detailed with decency and with temper, and submitted to the discussion and judgment of our fellow-citizens throughout the Union. Whether the like decency and temper have been observed in the answers of most of those states who have denied or attempted to obviate the great truths contained in those resolutions, we have now only to submit to a candid world. *Faithful to the true principles of the federal Union, unconscious of any designs to disturb the harmony of that Union* and anxious only to escape the fangs of despotism, the good people of this commonwealth are regardless of censure or calumniation. Lest, however, the silence of this commonwealth should be construed into an acquiescence in the doctrines and principles advanced, and attempted to be maintained by the said answers or, at least those of our fellow-citizens, throughout the Union, who so widely differ from us on those important subjects, should be deluded by the expectation that we shall be deterred from what we conceive our duty, or shrink from the principles contained in those resolutions,—therefore,

Resolved, That this Commonwealth considers the Federal Union upon the terms and for the purposes specified in the late compact, conducive to the liberty and happiness of the several states: That it does now unequivocally declare its attachment to the Union, and to that compact, agreeably to its obvious and real intention, and will be among the last to seek its dissolution: That, if those who administer the general government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, an annihilation of the state governments, and the creation, upon their ruins, of a general consolidated government, will be the inevitable consequence: That the principle and construction, contended for by sundry of the state legislatures, that the general government is the exclusive judge of the extent of the powers delegated to it, stop not short of *despotism*,—since the discretion of those who administer the government, and not the *Constitution*, would be the measure of their powers: That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of the infraction; and, *That a nullification, by those sovereignties of all unauthorized acts done under color of that instrument, is the rightful remedy:* That this Commonwealth does, under the most deliberate reconsideration, declare, that the said Alien and Sedition Laws are, in their opinion, palpable violations of the said Constitution; and, however cheerfully it may be disposed to surrender its opinion to a majority of its sister states, in matters of ordinary or doubtful policy, yet, in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: That, although this Commonwealth, as a party to the Federal compact, *will bow to the laws of the Union*, yet it does, at

the same time, declare, that it will not now, or ever hereafter, cease to oppose, in a constitutional manner, every attempt, at what quarter soever offered, to violate that compact; And finally, in order that no pretext or arguments may be drawn from a supposed acquiescence, on the part of this Commonwealth, in the constitutionality of those laws, and be thereby used as precedents for similar future violations of the federal compact, this Commonwealth does now enter against them its solemn PROTEST.

The particular importance of this resolution of 1799, appears in the fact that it gave to the advocates of State Sovereignty their party watchword: *nullification*.

The resolutions as a whole were significant as formal declarations of dissent from the prevailing interpretation of constitutional powers. So long as this protest was not recalled, it stood as a sort of party platform which could be appealed to at any moment.

Here, then, was an expression of opinion, tacitly indorsed by a great political party, which made the United States a political society bound together by ties different in construction from those of the Confederation, but after all essentially the same loose league. According to this opinion, carried to its logical consequences, the government of the United States under the Constitution was in reality only an advisory body, or an executive agent acting simply because not restrained by its principals. An editor of *Blackstone's Commentaries* expounded this view in 1803 as follows:

"The Federal government, then, appears to be the organ through which the united republics communicate with foreign nations and with each other. Their submission to its operation is voluntary; its councils, its engagements, its authority are theirs, modified and united. Its sovereignty is an emanation from theirs, not a flame in which they have been consumed, not a vortex in which they have been swallowed up. Each is still a perfect state, still sovereign, still independent, and still capable, should the occasion require, to assume the exercise of its functions, in the most unlimited extent." (Vid. Von Holst, 1, 151 note.)

CHAPTER V.

NATIONAL AND ANTI-NATIONAL TENDENCIES ILLUSTRATED BY THE TRIUMPH OF THE ANTI-FEDERALIST PARTY IN 1801.

(Vid. Andrews, Institutes, 171 sq.)

The party of Washington and of Hamilton rapidly forfeited public confidence. The reasons for this have been stated as follows by Prof. Andrews.

1. *The early errors* of (a) alienating Madison, (b) over-taxation, (c)

postponing creation of navy, (d) constantly expressing fear for the permanence of the government.

2. *Quarrels among the leaders.* Hamilton and his supporters were pitted against Adams and his friends. This old rivalry was brought to a crisis by Adams's independence in accepting the overtures of peace from France.

3. *High character, and ability* of the democratic chiefs, Jefferson, Madison, Gallatin and others. They knew how to organize, and profit by the advantageous points of their own party creed and by the errors of their opponents.

4. *Deepest cause*, a real growth of democratic sentiment in the country. This, 1st, from influence of immigrants, filling the backwoods settlements of New York and Pennsylvania, the decisive states; 2nd, from actual change of opinion among many Federalists. There was increasing distrust of the Federalist party as not in sympathy with popular government; of its foremost men as servile to England. (Miranda's Scheme.) People believed that the unfriendliness of France had been unscrupulously exaggerated for party ends. Congress, it was felt, had been too ready to tax, too willing to create a standing army. The Alien and Sedition acts, and the sullen obstinacy with which the authors of them clung to the unpopular experiment, had done fatal work. The Federalist leaders argued—(a) "liberty is not license; (b) freedom of speech and of the press is only the right to utter and publish the *truth*, hence not abridged by the acts in question; (c) aliens have no constitutional *rights*, but enjoy the privileges of the land only by favor.

The fateful presidential election took place November, 1800. The result of the electoral vote was 73 each for Jefferson and Burr, the anti-Federalist candidates; 65 for Adams, 64 for Pinckney, and 1 for John Jay. As there was no choice, the election went to the House, which had a Federalist majority, but the choice must be made between the two anti-Federalists having the highest number of electoral votes. After balloting from February 11th to 17th, Jefferson was elected. Here then was the party of State Sovereignty, of nullification, in control of the government. Thus the people endorse the anti-Federalist creed by their anti-Federalist majority. The claim that national unity in the present sense was at that time the people's will, is therefore *prima facie* baseless.

The Federalist party was no longer a power. Many of its members, and these the most liberal and patriotic, seeing that the new party was practically as broad in its policy as the old party had been in its professions, gave their allegiance to the victors. The handful of Federalists that remained in Congress nursed political enmities born of dead issues, and opposed the administration even when its measures were Federalist in spirit.

Yet Federalism did not die without fixing its stamp indelibly upon our institutions. Nearly the entire machinery of the general government, as it operates even now, is its work. Not to mention the Whig and modern Republican parties, close reproductions of primitive Federalism, or the

public credit, its child, methods of administration passed with little change from Adams to Jefferson and his successors; Federalist principles modified the entire temper and in no small degree directed the action of the Democratic party while in power. Horror of strong government, of army and navy, gave way. Indeed, where Federalism had only grasped the hilt, Democracy drew and used the sword. It was found that, safe and desirable as it might be to trust the people, necessity equally demanded that wealth, intelligence, conservatism should be enlisted in the cause of nationality. With champions of state rights at the head of affairs, particularists felt less call to emphasize their darling dogmas, more willingness to subordinate the states. Unspeakably valuable, as furthering this tendency, was Federalism's gift of Marshall to the Chief-justiceship, insuring in the highest tribunal of the country for the next thirty-five years sound views of the nature of the central government. A broad but just construction was given the Constitution on every occasion, as "the Supreme law of the land." State after state was arraigned, the court boldly assuming to define the boundary between Federal and state jurisdictions. There was thus silently and gradually imparted to our governmental fabric a consistency and solidity of incalculable worth against storms to come.

Division II—Anti-Federalist Administration of Federalist Principles.

CHAPTER 1.

THE DEMOCRATIC POLICY.

(Vid. Andrews, 176 sq.)

The Democratic party proved to have entered on a long lease of power. For forty years its hold upon affairs was not relaxed, and it was not broken by the election of Harrison and Taylor. Nor did it ever appear probable that the Whigs, upon any of the great issues that divided them from the Democrats, were in a way to win permanent advantage. Not till after 1850 had the ruling dynasty true reason to tremble; their danger was then from a new party, the Republican, inspired by the bold cry of anti-slavery; which the Whigs had never dared to raise. This half century of democratic dominance may be divided into two periods, by the presidency of J. Q. Adams (1825–'29) or the rise of the Whig party: the 1st covering the three double administrations of Jefferson, Madison and Monroe; the 2nd, the administrations of Jackson ('29–'37), Van Buren ('37–'41), Harrison—Tyler ('41–'45),

and Polk ('45–'49). The great public questions of these fifty years likewise range themselves in two groups, (a) *foreign politics*, relating to wars, boundaries, and territorial acquisitions; (b) *domestic politics*.

The Democratic policy was well foreshadowed as to its main outlines, in Jefferson's first inaugural. It favored: 1. Thrift and simplicity in government, involving close limitation of army, navy and diplomatic corps to positive and tangible needs. 2. Peculiar regard for the rights and interests of the common man, whether of foreign or of native parentage. 3. Strict construction of the Constitution, which was viewed to a great extent as a compact of states. 4. Special friendliness to agriculture and commerce.

From 3 sprung hostility to internal improvements. From 3 and 4 hostility to restrictive tariff. More particularly after the Whig schism, more yet after Jackson, did these ideas stand forth definite and pronounced as the authoritative democratic creed. In many points Jefferson was the typical Democrat. He had genuine faith in the people, in free government, in unfettered individuality. He would make the civil power supreme over the military, and scorned all pretensions of any particular class to rule.

CHAPTER II.

SLAVERY AND STATE SOVEREIGNTY.

"The compromises on the slavery question, inserted in the Constitution, were among the essential conditions upon which the Federal Government was organized. If the African slave trade had not been permitted to continue for twenty years, if it had not been conceded that three-fifths of the slaves should be counted in the apportionment of representatives in Congress, if it had not been agreed that fugitives from service should be returned to their owners, the thirteen states would not have been able in 1789 to form a more perfect Union. These adjustments in the Constitution were effected after the Congress of the old Confederation had dedicated the entire northwest territory to freedom. . . . The Ohio river was the dividing line. North of it freedom was forever decreed. South of it slavery was firmly established. Within the limits of the Union, as originally formed, the slavery question had therefore been compromised, the common territory partitioned, and the republic, half slave, half free, organized and sent forth upon its mission." (Blaine, Vol. I, Chap. I, Introd.)

"In 1793 Eli Whitney changed the history of the country by inventing the saw-gin, by which one slave could cleanse 1000 pounds of cotton a day. Slavery at once ceased to be a passive, patriarchal institution,

and became a means of gain, to be upheld and extended. The cotton export, but 189,316 pounds in 1791, rose to 1,610,760 lbs in 1794, and to 38,118,041 lbs. in 1804. Within five years after Whitney's invention, the slave states had become the cotton field of the world. In 1859, the cotton exported amounted to 1,400,000,000 lbs" (Johnston.)

While the Union was confined to the fringe of States along the Atlantic coast, the slavery question was not troublesome. In the North, slavery had been abolished in the states lying north of the line run between Maryland and Pennsylvania by the old surveyors Mason and Dixon. In the South before the invention of the cotton gin, slavery had, on the whole, been regarded as a necessary evil. It was for a long time possible to unite the representatives of these sections in the admission of new states, by using the Ohio as a dividing line between slavery and freedom. But when the tides of immigration had crossed the Mississippi and had begun to fill the Louisiana purchase, conflict could not be avoided, for there was no natural dividing line. In the House the members from the *free* states were a majority. In the Senate, the sections had been carefully equalized, but a few northern Senators generally voted with the South, thus giving it a majority in that body. (After Johnston: Politics 86–7).

CHAPTER III.

THE MISSOURI COMPROMISE.

(vid. Blaine I, 16 sq.)

In December 1819, the District of Maine petitioned Congress for admission into the Union. On the same day Missouri also applied for admission on the same terms of independence and equality with the old states, as prayed for by Maine. From that hour it was found impossible to consider the admission of Maine and Missouri separately. Geographically remote, differing in soil, climate and products, incapable of competing with each other in any pursuit, they were thrown into rivalry by the influence of the one absorbing question of slavery. Northern men were unwilling to admit Missouri unless slavery were prohibited by the act of admission; Southern men were determined that no restrictions should be imposed.

The House actually adopted the anti-slavery restriction. The Senate refused to concur, united Maine and Missouri in one bill, and passed it with an entirely new feature, viz: the provision since known as the *Missouri Compromise*, which forever prohibited slavery north of 36 deg. 30 min. in all territory acquired from France by the Louisiana purchase.

The House would not consent to admit the two states in the same bill, but finally agreed to the compromise, and March, 1820, Maine became a member of the Union without condition. A separate bill was passed permitting Missouri to form a constitution preparatory to her admission, subject however to the compromise. Missouri was thus granted permission to enter the Union as a slave state. But she was discontented with the prospect of having free states on three sides—east, north and west.

Although the Missouri Compromise was thus nominally perfected, and the agitation apparently ended, the most exciting and in some respects the most dangerous phase of the question was yet to be reached. After the enabling act was passed, the Missouri Convention assembled to frame a State Constitution. The inhabitants of the Territory were irritated by the long delay, caused, as they believed, by the introduction of a question which concerned only themselves, and which Congress had no right to control. From resentment, they inserted a provision in the Constitution declaring "*it shall be the duty of the General Assembly, as soon as may be, to pass such laws as may be necessary to prevent free negroes or mulattoes from coming to or settling in this state under any pretext whatsoever.*" As soon as *the Constitution* with this offensive clause was transmitted to Congress, the excitement broke forth with increased intensity, and the lines of the old controversy were at once re-formed.

The parliamentary struggle which ensued was bitter beyond precedent; threats of dissolving the Union were frequent, and apprehension of an impending calamity was felt throughout the country. The discussion continued with unabated vigor and ardor until the middle of February, and the Congress was to terminate the ensuing 4th of March. The House had twice refused to pass the bill admitting Missouri, declaring that the objectionable clause in her organic law was not only an insult to every state in which colored men were citizens, but was in flat contradiction of the provision of the Constitution, "*the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.*"

A second and final compromise was at last effected; and Missouri was admitted. This compromise declared that Missouri should be admitted to the Union upon the fundamental condition that no law should ever be passed by her legislature enforcing the objectionable provision in her Constitution, and that, by a solemn public act the state should declare and record her assent to this condition. Missouri accepted the condition promptly but not cheerfully, feeling that she entered the Union under a severe discipline, and upon humiliating terms.

The Missouri question marked a distinct era in the political thought of the country. With the end of the controversy, the anti-slavery agitation subsided as rapidly as it had arisen. The Northern states felt that they had absolutely secured to freedom a large territory west and north of Missouri. The Southern states believed that they had an implied and honorable understanding—outside and beyond the explicit letter of the law,—that new states south of the Missouri line could be

admitted with slavery, if they desired. The great political parties then dividing the country accepted the result; and for the next twenty years no agitation of the slavery question appeared in any political convention or affected any considerable body of the people. Within this period, however, there grew up that proscribed and persecuted class known as the Abolition party. They were denounced with unsparing severity by both Whigs and Democrats; they were condemned by many influential religious leaders; they were abused by the newspapers and assaulted by mobs. This brutal opposition only confirmed their resolution to destroy human slavery in America.

CHAPTER IV.

THE HAYNE–WEBSTER DEBATE: 1830.

(Cooper, American Politics: p. 28 sq.)

The tariff of 1828 is an era in our political legislation: from it the doctrine of "nullification" received new life, and from that date began a serious division between the North and the South. This tariff law was projected in the interest of the woolen manufacturers, but ended by including all manufacturing interests. The passage of this measure was brought about not because it was favored by a majority, but because of political exigencies. In the then approaching presidential election, Mr. Adams, who was in favor of the "American System," supported by Mr. Clay, his Secretary of State, was opposed by General Jackson. The tariff was made an administrative measure and became an issue in the canvass. The New England States, which had formerly favored free trade, on account of their commercial interests, changed their policy, and, led by Mr. Webster, became advocates of the protective system. The question of a protective tariff had now become not only political but sectional. The Southern states, as a section, were arrayed against the system, though prior to 1816 they had favored protection, not merely as an incident to revenue, but as desirable in itself. In fact, these tariff bills, each exceeding the other in its degree of protection, had become a regular appendage of our presidential elections.

General Jackson was elected, having received 178 electoral votes to 83 for John Quincy Adams. John C. Calhoun, of South Carolina, was elected Vice-President.

The election of General Jackson was a triumph of democratic principle and an assertion of the people's right to govern themselves. That principle, the victors held, had been violated in the presidential election in the House of Representatives in the session of 1824–25; and the sanction or rebuke of that violation was a leading question in the whole

canvass. It was also a triumph over the high protective policy and the broad construction of the Constitution; and of the democracy over the Federalists—or National Republicans, as they were then called,—and was the re-establishment of parties on principle, according to the landmarks of the early years of the government.

The short session of 1829–30 was rendered famous by the long and earnest debate in the Senate on the doctrine of *nullification*. It started by an apparently innocent resolution introduced by Mr. Foot of Connecticut. It proposed an inquiry into the expediency of limiting the sales of public lands, and was united with a proposition *to limit such sales to lands then in the market*, to suspend the surveys of the public lands, and to abolish the office of Surveyor-General. The effect of such action would have been to discourage immigration to the new states of the West, and to check the settlement of these states and the territories. The resolution was strongly opposed by western members. The debate became bitter and sectional. The quarter of the Union from which the proposition came was charged with a deliberate and traditional policy of hostility to the West. During the debate, Mr. Webster incidentally referred to the famous ordinance of 1787 for the government of the northwestern territory, and especially to the anti-slavery clause which it contained.

Closely related to the general subject of Mr. Webster's remarks was the topic of slavery, and the effect of its existence or non-existence in different states. Kentucky and Ohio were taken for examples, and the superior improvement and population of Ohio were attributed to its exemption from the evils of slavery. This was a delicate and dangerous subject, and the more so because the wounds of the Missouri controversy were yet sore. Mr. Hayne, from South Carolina, answered with warmth, and resented, as a reflection upon the slave states, this unfavorable comparison. Mr. Benton of Missouri followed on the same side, and in the course of his remarks said:—"I regard with admiration, that is to say with wonder, the sublime morality of those who cannot bear the abstract contemplation of slavery, at the distance of five hundred or a thousand miles off."

This allusion to the Missouri controversy, and invective against the free states for their part in it, brought a reply from Webster, showing what the conduct of the free states had been at the first introduction of the slavery topic in the Congress of the United States, and that they totally refused to interfere between master and slave in any way whatever. But the topic which became the leading feature of the whole debate and gave it permanent interest was that of *nullification*, a doctrine then for the first time broached in the Senate. Mr. Hayne, voicing the opinions of the Vice-President, Mr. Calhoun, was the champion of the doctrine; Mr. Webster was its assailant. This turn in the debate was brought about by Mr. Hayne having made allusion to the course of New England during the war of 1812, and especially to the assemblage known as the Hartford Convention, to which designs unfriendly to the Union had been attributed.

This gave Mr. Webster an opportunity to retaliate, and he referred to the public meetings which had just then taken place in South Carolina on the subject of the tariff, and at which, resolves were passed and propositions adopted significant of resistance to the act; and consequently of disloyalty to the Union. He drew Mr. Hayne into their defence, and into an assertion of the doctrine of *nullification*. He said:—"*I understand the honorable gentleman from South Carolina to maintain that it is a right of the State Legislature to interfere, whenever, in their judgment, this government transcends its constitutional limits, and to arrest the operation of its laws, ... that the states may lawfully decide for themselves, and each state for itself, whether, in a given case, the act of the general government transcends its powers, ... that if the exigency of the case, in the opinion of the state government require it, such state government may by its own sovereign authority, annul an act of the general government, which it deems plainly and palpably unconstitutional.*"

Mr. Hayne was evidently unprepared to admit, or fully deny, the propositions as so laid down, but contented himself with quoting the words of the Virginia Resolution of 1798:—vid. p. 76.

This resolution came to be understood by Mr. Hayne and others on that side of the debate, in the sense expressed by Mr. Webster. The latter argued that the doctrine had no foundation either in the Constitution nor in the Virginia resolutions,—that the Constitution makes the general government act upon citizens within the states, not upon the states themselves, as in the old Confederation: that within their constitutional limits the laws of Congress were supreme, and that it was treasonable to resist them by force: that the question of their constitutionality was to be decided by the Supreme Court: with respect to the Virginia resolutions, on which Mr. Hayne relied, Mr. Webster disputed the interpretation put into them—claimed for them an innocent and justifiable meaning, and defended Mr. Madison against the suspicion of having framed a resolution asserting the right of a state legislature to annul an Act of Congress, and thereby putting it in the power of one state to destroy a form of government which he had just labored hard to establish.

Mr. Hayne, on his part, gave, as the practical part of his doctrine, the pledge of forcible resistance to any attempt to enforce unconstitutional laws. He said:—The gentleman has called upon us to carry out our scheme practically. Now, sir, if I am correct in my view of the matter, then it follows, of course, that the right of a state being established, the federal government is bound to acquiesce in a solemn decision of a state, acting in its sovereign capacity, at least so far as to make an appeal to the people for an amendment to the Constitution. This solemn decision of a state binds the general government, under the highest constitutional obligation, not to resort to any means of coercion against the citizens of the dissenting state. . . Suppose Congress should pass an agrarian law, or a law emancipating our slaves, or should commit any other gross

violations of our constitutional rights, will any gentleman contend that the decision of every branch of the federal government in favor of such laws, could prevent the states from declaring them null and void, and protecting their citizens from their operation? . . Let me assure the gentlemen that, whenever any attempt shall be made from any quarter, to enforce unconstitutional laws, clearly violating our essential rights, our leaders (whoever they may be) will not be found reading black letter from the musty pages of old law books. They will look to the Constitution, and when called upon by the sovereign authority of the states to preserve and protect the rights secured to them by the charter of their liberties, they will succeed in defending them, or 'perish in the last ditch'."

These words of Mr. Hayne seem almost prophetic in view of the events of thirty years later. Few believed that the Virginia resolutions would be practically illustrated by forcible resistance to the tariff laws on the part of South Corolina. Few believed that any scheme of disunion would be tested.

Mr. Webster's closing reply was a brilliant piece of rhetoric, delivered in his majestic style, and apparently with deep seriousness. He concluded with these words—"When my eye shall be turned to behold, for the last time, the sun in the heavens, may I not see him shining on the broken and disfigured fragments of a once glorious Union; on states dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood. Let their last feeble and lingering glance rather behold the gorgeous ensign of the Republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, nor a single star obscured, bearing for its motto no such miserable interrogatory as 'What is all this worth?' nor those other words of delusion and folly 'Liberty first and Union afterwards'; but everywhere, spread all over in characters of living light, blazing in all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart—'Liberty *and* Union, now and forever, one and inseparable!'"

CHAPTER V.

THE WILMOT PROVISO.

In 1846 it became certain that a large party seriously proposed to wrest territory from Mexico.

"The simple fact that an acquisition of territory was to be made could not but throw the Union into convulsions, since not a square mile of territory could be acquired, towards which the Union stood simply as a Union, and not rather as a Federal State split into two geographical

divisions, whose interests in the most essential point were diametrically opposed to each other. With any other nation in the world, the sentence would have simply been: The defeated enemy must make cessions of territory; but in the United States, whose position in history is unique, owing to internal division by two opposing principles, this sentence could not be uttered without drawing after it the question:—in favor of which section?" (Von Holst, 301.)

David Wilmot, a member of Congress from Pennsylvania, introduced an amendment to a bill appropriating money—nominally to *buy* the territory, but really to enable the administration to carry on the war. The amendment provided that *slavery should not be allowed in the territory so gained.* This was the celebrated *Wilmot Proviso.* It was defeated by southern votes, and the new territory was acquired without it. The territory of the Union had thus been increased by an area equal to that which originally won independence for Great Britain, yet it was undecided whether the law of this new territory was to be freedom or slavery.

CHAPTER VI.

THE FREE-SOIL PARTY

Came into existence in 1848. It was composed of former Democrats and Whigs who supported the Wilmot Proviso, together with the Abolitionists, or Liberty party. The old parties, the Democrats and Whigs, had Southern members whom they were afraid of losing, and they both refused to support the Wilmot Proviso. Thus the Free-Soilers were compelled to form a new party of their own.

CHAPTER VII.

THE WHIG VICTORY OF 1848.

(Johnston, 151.)

Taylor's inauguration (1849) marks the beginning of a process of change which in a few years destroyed one of the two great parties and changed the character of the other. The Free Soil Democrats, who opposed any extension of slavery into the territories, and had therefore abandoned the Democratic party, saw no reason for joining the Whig party, which had distinctly rejected the principles of the Wilmot Proviso. The consequent loss of the Democrats in numbers, was more than balanced by the accession of pro-slavery Whigs, who made their new party progressively more pro-slavery. The Whig losses had no com-

pensating gains. The disintegration of the party continued from its success in electing a slave-holding President in 1848 until the rise of its anti-slavery successor in 1855–6.

CHAPTER VIII.

SQUATTER SOVEREIGNTY.

(Johnston continued.)

The secession of pro-slavery Whigs soon brought prominently forward the doctrine which the last Democratic national convention had voted down, that the *Constitution gave Congress no power to interfere with slavery in the territories, and that the people in each territory should allow or prohibit slavery as they pleased.* This was *Squatter Sovereignty.* Of course it would follow from this that the Missouri Compromise of 1820 was illegal and unconstitutional, as it abolished slavery in the territories north of 36° 30'. But this consequence was not at first mentioned, and perhaps not thought of.

As Squatter Sovereignty was a strict constructionist theory, it was more easy to force it upon the Democrats than upon the Whig party. From this time, therefore, Southern leaders aimed to control the Democratic party more thoroughly. The struggle between the advocates of the Wilmot Proviso, which forbade slavery in the new territory, and of Squatter Sovereignty which allowed its introduction if desired by the people, was precipitated by the *discovery of gold* in California. The consequent rush of immigration increased the population of California so rapidly that a State Constitution expressly prohibiting slavery was formed June, 1849. This practical application of Squatter Sovereignty was equally surprising and unwelcome to its first advocates.

CHAPTER IX.

THE COMPROMISE OF 1850.

(Johnston, 153.)

California applied for admission as a state, Feb. 13th, 1850. Shortly before the application, Clay had submitted a proposition to compromise the conflicting claims of the advocates of slavery extension and of slavery restriction. His proposition included seven points and was called the Omnibus Bill:—(1) the admission of any new states properly formed from Texas (2) the admission of California, (3) the organization

of the territories of New Mexico and Utah, without the Wilmot Proviso, (i. e. with Squatter Sovereignty;) (4) the passage of the last two measures in one bill, (5) the payment of a money indemnity to Texas for her claims to New Mexico, (6) a more rigid Fugitive Slave law, (7) the abolition of the slave *trade*, but not of *slavery* in the District of Columbia.

This was the famous *Compromise of* 1850. It was opposed by the Whigs and Free Soilers, who considered it a surrender of free soil to the slave power, and by the extreme southern Democrats, who considered it a surrender of the slave holder's right to hold his property and slaves wherever he pleased to settle. It was, at all events, satisfactory to the great majority of the people, as averting civil war and disunion.

The clause in this compromise, most important in its bearing upon future events, was the Fugitive Slave provision. The new law encouraged and directed the surrender of fugitive slaves by U. S. Commissioners in the North, without any trial of jury, and commanded all good citizens to aid in making arrests. The work of chasing and arresting fugitive slaves in the northern states was carried on diligently, often inhumanly. The consequent disgust and horror caused the passage, by some northern Legislatures, of *personal liberty* laws, intended to protect free negroes falsely alleged to be fugitive slaves.

CHAPTER X.

REPEAL OF THE MISSOURI COMPROMISE, 1854.

(Vid. Andrews; Institutes, p. 226.)

These measures of 1850 proved anything but the "finality" which both parties promised and insisted they should be. The slavocracy now moved to its crowning perfidy, the undoing of the compromise of 1820. In 1854 it became necessary to form territorial governments for Kansas and Nebraska, for settlements were spreading in that quarter. In both of these territories, Congress had "forever" forbidden slavery when Missouri was admitted as a slave state in 1820. But Stephen A. Douglas of Illinois, and other new Democratic leaders, advanced the idea that the compromise of 1850 had changed all this, and that Congress was bound to act in the case of Kansas and Nebraska as it had done in the case of Utah and New Mexico.

Douglas therefore put into the bill organizing the territories in question, a declaration that Congress had no right to forbid slavery in Kansas and Nebraska in 1820; that slavery was now neither forbidden nor allowed in these territories; and that their own people were to settle the matter. In this form the Kansas and Nebraska act was passed (1854) by the votes of northern and southern Democrats and southern Whigs. There was no more peace on the subject of slavery.

In the North there was more excitement and anger than had been caused by any previous action of congress. People were reminded that slavery had been forbidden in Kansas and Nebraska, as part of the bargain between North and South, and it was said that the South, having received its share in the admission of Missouri, had now broken its agreement as to the rest of the Louisiana purchase. It soon came to be believed that Southerners cared less for the Union, or for anything else, than they did for the extension of slavery; and the North began to unite against them.

CHAPTER XI.

THE REPUBLICAN PARTY.

(Vid. Johnston's United States, p. 275.)

At the first election of Congressmen after the passage of the Kansas Nebraska Act, every one in the North who was opposed to the extension of slavery, whether he had been called Democrat, Whig, Free-Soiler, or American, dropped his former party and voted for candidates opposed to the Kansas–Nebraska Act. At first they were called "Anti-Nebraska men," and under this name they elected, in 1854, a majority of the House of Representatives, for the next congress. Before the new congress met, they had taken the name of the Republican party. The membership of the party was mainly of former northern Whigs. It was confined to the northern states, with a few members in Missouri—chiefly Germans—and in West Virginia, settled largely from Ohio.

In the South the feeling was as much astonishment as anger. People there were so accustomed to slavery that they could see no reason for this excitement in the North. They concluded that it had been worked up by men who wanted to get into power. They felt that the South was attacked without reason: the southerners of all parties began to unite against the North as a common enemy.

CHAPTER XII.

"BLEEDING KANSAS."

(Johnston continued.)

The road to Kansas from the northern states went straight across the slave state of Missouri. The people of western Misssouri refused to allow free state parties to cross their state into Kansas, and forced them to turn back. When the first election day came, parties of men from

Missouri moved into Kansas, voted and made it a slave territory. Then the free-state parties took the roundabout road through Iowa, entering Kansas from the north, and the struggle in the territory itself began.

The struggle in Kansas was between settlers from free, and those from slave states. The southern settlers formed a government, and the northern settlers formed another; each called the other party rebels against lawful government. As each side attempted to put its laws into execution, and was resisted by force, the struggle soon became an open war. Men were shot; parties of immigrants were dispersed and robbed; towns were plundered and burned. Small armies, with cannon, were formed on both sides; the newspapers all over the country were filled with news from Kansas. The President sent out one governor after another; none of them could do anything to keep order, until the free-state settlers became so numerous that their opponents gave up the struggle, (1858).

CHAPTER XIII.

THE DRED SCOTT DECISION.

(Vid. Johnston, American Politics p. 170; and same, in Lalor's Cyclopædia, title *Dred Scott.*)

In 1834, Dred Scott, a negro, was a slave of Dr. Emerson, of the regular army, who took him from Missouri to Rock Island, Illinois, where slavery was prohibited by statute and by the ordinance of 1787; and thence, May, 1836, to Fort Snelling, Wisconsin, where slavery was prohibited by the Missouri Compromise. In 1836, Scott married Harriet, another slave of Dr. Emerson, and in 1838, Dr. Emerson, with his slaves, returned to Missouri. Here Scott, sometime afterward, discovered that his transfer by his master to Illinois and Wisconsin had made him a free man, according to previous decisions of the Missouri courts; and in 1848, having been whipped by his master, he brought suit against him for assault and battery, in the state circuit court of St. Louis county, and obtained judgment in his favor. *On appeal*, the supreme court of Missouri, in 1852, two justices in favor, and the chief justice dissenting, reversed the former Missouri decisions, refused to notice the Missouri Compromise or the Constitution of Illinois, and remanded the case to the state circuit court, where it remained in abeyance pending the argument and decision in the supreme court of the United States.

Soon after the hearing in the state supreme court, Dr. Emerson sold his slaves to John F. A. Sandford, of the city of New York. On the ground that Scott and Sandford were "citizens of different states"—viz. of Missouri and New York,—suit against Sandford for assault and bat-

tery was at once brought in the *federal circuit court* for Missouri. (Vid. Constitution, Article III., Section II., § 1.) Here Sandford, April, 1854, argued that this court had no jurisdiction, on the ground that plaintiff was not, as alleged in the declaration, a citizen of Missouri, but "a negro of African descent; his ancestors were of pure African blood, and were brought into this country and sold as negro slaves."

Sandford then pleaded, in bar to the action, that the plaintiff was his negro slave, and that he had only "gently laid hands" on him to restrain him, as he had a right to do. The court instructed the jury that the law was with the defendant. The plaintiff excepted. On the exception, the case went to the United States supreme court.

The case now assumed an importance altogether disproportionate to the interests immediately involved, for this reason:—the question of slavery had come, as we have seen, to overshadow all others in politics, and the advocates of its extension and of its restriction were each exerting every means to obtain control of all departments of the government. The slavery men held the presidency and the senate. The friends of free labor, under the name of anti-Nebraska men, had just gained control of the house. *The Dred Scott case was now* (1855–6) *to be the test of the affiliations of the supreme court.*

The essential points for decision were two: 1. *Had the federal circuit court jurisdiction?* that is, was Dred Scott a citizen in the view of the Constitution? 2. *If the court had jurisdiction, was its decision against Dred Scott correct?* In considering these two questions, it must be remembered that federal courts are required by the act of 1789, Section 25, to follow the statutes and constructions of the respective states wherever they come in question, unless they are in conflict with the Constitution.

The *Missouri supreme court* had decided, on the evidence submitted, that Dr. Emerson's residence in Illinois and Wisconsin was only temporary, and in obedience to the orders of his government; that he had no intention of changing his domicile; and that, whatever might be Scott's status while in Illinois and Wisconsin, on his return to Missouri the local law of Missouri attached upon him, and his servile character returned. On this general ground, chief justice Taney (six associate justices assenting, two dissenting) decided 1. *That the plaintiff in error was not a citizen of Missouri in the sense in which that word is used in the Constitution;* 2. *That the circuit court of the United States, for that reason, had no jurisdiction in the case and could give no judgment in it;* that its judgment must consequently be reversed, and the suit dismissed for want of jurisdiction.

Had the supreme court confined its action to a denial of jurisdiction in this case, on the ground taken by the supreme court of Missouri, the decision would doubtless have been generally accepted as law, however harsh, in the case of slaves removed temporarily from state jurisdiction and then brought back. But, impelled, as has been charged, by a superserviceable desire to forward the interests and designs of slaveholders in

the territories, or, to view the case in the most favorable light, challenged by the wide range of the arguments of counsel on both sides to a work of supererogation, the chief justice and his associates proceeded to deliver a course of lectures on history, politics, ethics and international law, the exact connection of which with the legal subject matter in hand it was in many cases difficult for the justices themselves to make perfectly clear. In these additions to the denial of jurisdiction lay the interest, importance and far-reaching consequences of the Dred Scott decision. These additions may be summarized as follows:—

1. *A denial of the legal existence of the African race as persons, in American society and constitutional law.* Sandford's plea, given above, denied the circuit court's jurisdiction on the ground that Scott was of the African race, as if that necessarily implied lack of citizenship. The circuit court had overruled the plea; but the supreme court reverted to the *plea*, and sustained it. The opinion of the court asserted that the African race, for over a century before the adoption of the Constitution, had been considered as a subordinate class of beings, so far inferior that they had no rights which the white man was bound to respect; that they had not come to this country voluntarily, as persons, but had been brought here as merchandise, as property, as *things*; that they held that position in the view of the framers of the Constitution, and were not included in the words "people" or "citizens," in the Declaration of Independence, the Articles of Confederation, or the Constitution; and that, even when emancipated, they retained that character, and were not, nor could by any possibility ever become citizens of the United States or citizens of a state in the view of the Constitution, capable of suing or being sued, or possessed of civil rights, except such as a state, for its own convenience and within its own jurisdiction, might choose to grant them.

2. *A denial of the supreme control of Congress over the territories.* The arguments of counsel had brought up the question of the power of congress to "make all needful rules and regulations respecting the territories and other property belonging to the United States;" (Constitution, Art. IV., Sec. III., § 2.) The court held that this language, by previous decisions and the plain sense of the words, *referred only to the territory and property in possession of the United States when the Constitution was adopted, and not to Louisiana and other territory afterwards acquired*; that the right to govern these last named territories was only the inevitable consequence of the right to acquire territory by war or purchase; that congress, therefore, had not the absolute and discretionary power to make "*all* needful rules and regulations" respecting them, but only such as the Constitution allowed: *that the right of every citizen to his "property," among other things, was guaranteed by Amendment V.; that slaves were recognized as "property" throughout the Constitution; and that congress had therefore no more right to legislate for the destruction of property in slaves than to legislate for the establishment of a state religion there.*

On the contrary, the dissenting opinions held that slavery was valid only by state law, and that a slave was "property" only by virtue of state law; that the Constitution was explicit on this point (e. g. "no person held to service or labor in one state, *under the laws thereof*," &c.); that the slave, when taken by the master's act out of the jurisdiction of the state law which made him a slave, at once lost his artificial character of property and resumed his natural character of a person; and that the state law could not accompany him to the territories.

Of course this reasoning would necessarily have made all the territories, south as well as north of latitude 36° 30', free soil, unless slavery should be established there by act of congress or by popular agreement in forming state constitutions.

3. *A denial of the Constitutionality of the Missouri Compromise.*

From the preceding doctrine the court necessarily held that the act of March 6, 1820, commonly known as the Missouri Compromise, which prohibited slavery in the province of Louisiana north of latitude 36° 30', and outside of Missouri, was an unconstitutional assumption of power by congress, and was therefore void and inoperative, and incapable of conferring freedom upon any one who was held as a slave under the laws of any one of the states, even though his owner had taken him to the territory with the intention of becoming a permanent resident.

The Dred Scott case was the last attempt to decide the contest between slavery extension and slavery restriction by processes of law; and the course of events began at once to tend with increasing rapidity toward a decision by force. The North refused to accept the decision. It was believed there that negro slaves were considered by the Constitution as *persons held to labor*, and not as property; and that they were property only by state law. The effect of the decision was to make the South more certain that it was right, and to make the North exceedingly angry with the supreme court itself.

"Slavery had thus set the two sections, North and South, completely against one another. It had arrayed them in successive conflicts with one another, until there seemed to be no escape from the last and worst of conflicts."

CHAPTER XIV.

THE CRISIS APPROACHING.

"The South had not shared equally in the prosperity which the census of 1860 discovered in the country as a whole. Plenty of money went to the South every year, for its cotton crop of 1860 sold for about $250,000,000; but the money seemed to do no good. It did not build

up factories, railroads, colleges, schools, libraries, or the other signs of growth, as in the North. Lands were worth much less in the South than in the North. All the commerce was in northern vessels; and Charleston, which in 1800 was one of the busiest seaports on the Atlantic coast, now did hardly any business of its own. It was not to be expected that the southern people would be satisfied with such a state of affairs. They sought long for the cause of their backwardness, and its remedy.

"The cause is now seen to have been *slavery*, but the South could not see it in 1860. Slaves worked only because compelled; hence slowly, carelessly, stupidly. In factories or on railroads they were of little use. The *rich* whites did not need to work; the *poor* whites did not wish to, because they had grown up in the belief that work was a sign of slavery. In the North there was lively competition for work, and consequent activity. In the South there was no great number of persons who really wanted to work, and everything stood still.

"The South, in 1860, could only see that everything was going wrong. It was growing poorer as the North grew richer, and weaker as the North grew stronger. Five new free states had been admitted since Texas, the last slave state, entered the Union; a sixth, Kansas, was demanding admission; and others were evidently coming soon. Every new free state made the South weaker in both branches of congress, and, as states are formed from territories, the South came to believe that any refusal to allow slavery in the territories was intended to make the South still weaker."

The election of 1860 proved to be the signal for the outbreak of the "irrepressible conflict." There were four parties in the field, viz:

(a) Republican; Lincoln and Hamlin.
(b) Southern Democrats; Breckenridge and Lane.
(c) Northern Democrats; Douglas and Johnson.
(d) American; Bell and Everett.

(For the platforms, vid. Cooper, American Politics; Bk. II. p. 41 sq.)

CHAPTER XV.

SECESSION.

A convention in South Carolina called immediately after the election of Lincoln and Hamlin, unanimously passed the following (Dec. 20, 1860,) viz:

ORDINANCE OF SECESSION—1860.

An ordinance to dissolve the Union between the State of South Caro-

lina and other States united with her under the compact entitled "The Constitution of the United States of America."

We, the People of the State of South Carolina, in Convention assembled, do declare and ordain, and it is hereby declared and ordained, that the Ordinance adopted by us in Convention, on the Twenty-third of May, in the year of our Lord one thousand seven hundred and eighty-eight, whereby the Consitution of the United States was ratified, and also all other Acts and parts of Acts of the General Assembly of the State ratifying amendments of the said Constitution, are hereby repealed, and the Union now subsisting between South Carolina and other States, under the name of the United States of America, is hereby dissolved.

In justification of the preceding ordinance was issued the following:—

SOUTH CAROLINA DECLARATION OF INDEPENDENCE.

The State of South Carolina, having determined to resume her separate and equal place among nations, deems it due to herself, to the remaining United States of America, and to the nations of the world, that she should declare the causes which have led to this act.

In the year 1765, that portion of the British empire embracing Great Britain undertook to make laws for the government of that portion composed of the thirteen American colonies. A struggle for the right of self-government ensued, which resulted, on the 4th of July, 1776, in a declaration by the colonies, "that they are, and of right ought to be, free and independent states, and that, as free and independent states, they have full power to levy war, to conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do."

They further solemnly declared, that whenever any "form of government becomes destructive of 'the ends for which it was established, it is the right of that people to alter or abolish it, and to institute a new government." Deeming the government of Great Britain to have become destructive of these ends, they declared that the colonies "are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is and ought to be totally dissolved"

In pursuance of this declaration of independence, each of the thirteen states proceeded to exercise its separate sovereignty; adopted for itself a constitution, and appointed officers for the administration of government in all its departments—legislative, executive, and judicial. For purpose of defence, they united their arms and their counsels; and, in 1778, they united in a league, known as the articles of confederation, whereby they agreed to intrust the administration of their external relations to a common agent, known as the Congress of the United States, expressly declaring in the first article, "that each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and

right, which is not, by this confederation, expressly delegated to the United States in Congress assembled."

Under this consideration the war of the Revolution was carried on, and on the 3d of September, 1783, the contest ended, and a definite treaty was signed by Great Britain, in which she acknowledged the independence of the colonies in the following terms:—

Article I. His Britannic Majesty acknowledges the said United States, viz.: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantation, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign, and independent states; that he treats them as such; and for himself, his heirs, and successors, relinquishes all claim to the government, proprietary and territorial rights of the same, and every part thereof.

Thus were established the two great principles asserted by the colonies, namely, the right of a state to govern itself, and the right of a people to abolish a government when it becomes destructive of the ends for which it was instituted. And concurrent with the establishment of these principles was the fact, that each colony became and was recognized by the mother country as a free, sovereign and independent state.

In 1787, deputies were appointed by the states to revise the articles of confederation, and on September 17th, 1787, the deputies recommended for the adoption of the states the articles of union known as the Constitution of the United States.

The parties to whom the Constitution was submitted were the several sovereign states; they were to agree or disagree, and when nine of them agreed, the compact was to take effect among those concurring; and the general government, as the common agent, was then to be invested with their authority.

If only nine of the thirteen states had concurred, the other four would have remained as they then were — separate, sovereign states, independent of any of the provisions of the Constitution. In fact, two of the states did not accede to the Constitution until long after it had gone into operation among the other eleven; and during that interval, they exercised the functions of an independent nation.

By this Constitution, certain duties were charged on the several states, and the exercise of certain of their powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. On the 23d of May, 1788, South Carolina, by a convention of the people, passed an ordinance assenting to this Constitution, and afterwards altering her own Constitution to conform herself to the obligation she had undertaken.

Thus was established, by compact between the states, a government with defined objects and powers, limited to the express words of the grant, and to so much more only as was necessary to execute the power granted. The limitations left the whole remaining mass of power sub-

ject to the clause reserving it to the states or to the people, and rendered unnecessary any specification of reserved powers.

We hold that the government thus established is subject to the two great principles asserted in the declaration of independence, and we hold further that the mode of its formation subjects it to a third fundamental principle, namely—the law of compact. We maintain that in every compact between two or more parties, the obligation is mutual—that the failure of one of the contracting parties to perform a material part of the agreement entirely releases the obligation of the other, and that, where no arbiter is appointed, each party is remitted to his own judgment to determine the fact of failure with all its consequences.

In the present case that fact is established with certainty. We assert that fifteen of the states have deliberately refused for years to fulfil their constitutional obligation, and we refer to their own statutes for the proof.

The Constitution of the United States, in its fourth article, provides as follows:—

"No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due."

This stipulation was so material to the compact that without it that compact would not have been made. The greater number of the contracting parties held slaves, and the state of Virginia had previously declared her estimate of its value by making it the condition of cession of the territory which now composes the states north of the Ohio river.

The same article of the Constitution stipulates also for the rendition by the several states of fugitives from justice from the other states.

The general government, as the common agent, passed laws to carry into effect these stipulations of the states. For many years these laws were executed. But an increasing hostility on the part of the northern states to the institution of slavery has led to a disregard of their obligations, and the laws of the general government have ceased to effect the objects of the Constitution. The states of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Illinois, Indiana, Ohio, Michigan, Wisconsin, and Iowa have enacted laws which either nullify the acts of Congress, or render useless any attempt to execute them. In many of these states the fugitive is discharged from the service or labor claimed, and in none of them has the state government complied with the stipulation made in the Consitution. The state of New Jersey, at an early day, passed a law for the rendition of fugitive slaves in conformity with her constitutional undertaking; but the current of anti-slavery feeling has led her more recently to enact laws which render inoperative the remedies provided by her own law, and by the laws of Congress. In the state of New York even the right of transit for a slave has been denied by her tribunals, and the states of

Ohio and Iowa have refused to surrender to justice fugitives charged with murder and inciting servile insurrection in the state of Virginia. Thus the constitutional compact has been deliberately broken and disregarded by the non-slaveholding states, and the consequence follows that South Carolina is released from its obligation.

The ends for which this Constitution was framed are declared by itself to be "to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."

These ends it endeavored to accomplish by a federal government, in which each state was recognized as an equal, and had separate control over its own institutions. The right of property in slaves was recognized by giving to free persons distinct political rights; by giving them the right to represent, and burdening them with direct taxes for three-fifths of their slaves; by authorizing the importation of slaves for twenty years, and by stipulating for the rendition of fugitives from labor.

We affirm that these ends, for which this government was instituted, have been defeated, and the government itself has been made destructive of them by the action of the non-slaveholding states. These states have assumed the right of deciding upon the propriety of our domestic insitutions, and have denied the rights of property established in fifteen of the states and recognized by the Constitution; They have denounced as sinful the institution of slavery; they have permitted the open establishment among them of societies whose avowed object is to disturb the peace and claim the property of the citizens of other states. They have encouraged and assisted thousands of our slaves to leave their homes, and those who remain have been incited by emissaries, books, and pictures to servile insurrection.

For twenty-five years this agitation has been steadily increasing, until it has now secured to its aid the power of the common government. Observing the forms of the Constitution, a sectional party has found within that article establishing the executive department the means of subverting the Constitution itself. A geographical line has been drawn across the Union, and all the states north of that line have united in the election of a man to the high office of President of the United States whose opinions and purposes are hostile to slavery. He is to be entrusted with the administration of the common government, because he has declared that that "government cannot endure permanently half slave, half free," and that the public mind must rest in the belief that slavery is in the course of ultimate extinction.

This sectional combination for the subversion of the Constitution has been aided in some of the states by elevating to citizenship persons who, by the supreme law of the land, are incapable of becoming citizens, and their votes have been used to inaugurate a new policy hostile to the South, and destructive of its peace and safety.

On the 4th of March next this party will take possession of the gov-

ernment. It has announced that the South shall be excluded from the common territory; that the judicial tribunals shall be made sectional, and that a war must be waged against slavery until it shall cease throughout the United States.

The guarantees of the Constitution will then no longer exist; the equal rights of the states will be lost. The slaveholding states will no longer have the power of self-government or self-protection, and the federal government will have become their enemies.

Sectional interest and animosity will deepen the irritation, and all hope of remedy is rendered vain by the fact that public opinion at the North has invested a great political error with the sanctions of a more erroneous religious belief.

We, therefore, the people of South Carolina, by our delegates in convention assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, have solemnly declared that the union heretofore existing between this state and the other states of North America is dissolved, and that the state of South Carolina has resumed her position among the nations of the world as a free, sovereign, and independent state, with full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may, of right, do.

And, for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor.

Copies of the Ordinance and Declaration were sent to the other slaveholding states. Similar action was taken as follows: by Mississippi, January 9, 1861; Florida, January 10; Alabama, January 11; Georgia, January 19; Louisiana, January 26; Texas, February 1.

Representatives from these states met and organized a provisional government at Montgomery, Alabama, February 4, 1861. The number of states in secession was increased by Virginia April 17; Arkansas, May 6; and North Carolina May 20.

CHAPTER XVI.

RECONSTRUCTION.

(Vid. Johnston; Art. "Reconstruction," in Lalor's Cyclopaedia.)

SECTION 1.—CONDITIONS OF THE PROBLEM.

The government was confronted with the problem of the restoration of the seceding states to their normal relations with the Union after the suppression of armed resistance therein to the Constitution and the laws. Such a problem would have been easy of solu-

tion under a simple and direct acting government: in a highly complicated system, like that of the United States, in which the parts and their action are so delicately adjusted, any derangement shows its defects everywhere; and a derangement so great as was introduced by secession, since it cannot check the national force, is almost certain to throw all the wheels out of gear, convert the national machine into a blind and guideless power, and make a bad master out of a good servant. In the matter of reconstruction the difficulty was increased, 1. *By the length and bitterness of the war.* The terms of reconstruction which were possible in 1862, 1863, 1864 or 1866, were each of them impossible within a year thereafter. Every battle lost and won, every vessel sunk, every house burned, every case of mistreatment of prisoners, was, in its way, not only a factor in anti-slavery action, but in final reconstruction. 2. *By the status of the freedmen.* It was impossible that the successful party should feel no interest whatever in the fate of the beings who had been converted by its success from chattels into persons. It was natural that the disposition of the conquered towards the freedmen should be keenly and suspiciously scrutinized; and thus every act of individual violence, every appearance of organized repression, which came to light before the work of reconstruction was completed, became a silent factor in the work. 3. *By the existence of a written Constitution which provided for no such state of affairs.* An omnipotent British Parliament might have soon hit upon a formal settlement, though its success in solving the Irish problem has not been so swift or sure as to make us wish for a change of regime. The American government could only engage in a series of experiments, more or less successful, and finally rest content with that solution which seemed to offer the least difficulty and the greatest advantages to the nation.

Section II.—Political Precedents Alleged.

1. *The Guarantee Clause.* The Constitution (Art. IV. Sec. 4.) reads: "*The United States shall guarantee to every state in this Union a republican form of government.*" To this was often added the following paragraph from the powers of congress, (Art. 1, Sec. 8, § 18): "*To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States or in any department or officers thereof.*" This, it was claimed, gave congress power to pass all laws which it should consider "necessary and proper" for carrying into effect the guarantee clause. This would have been undeniable if the language had been "*congress* shall guarantee, &c.;" but the peculiar phraseology, "the *United States* shall guarantee," seems to exclude all these interpretations, and give the power concurrently to all the governmental agents, executive, legislative and judicial. Even in this view, however, the case of Luther vs. Borden, (7 How. 1.) would seem to show that congress has the power to enact laws to carry into execution

its concurrent power in the premises, and that the president is bound to execute them.

2. *The Resolutions of* 1861. At the special session of 1861 joint resolutions were introduced to define the objects of the war. That which was pertinent to this subject was as follows: " . . That this war is not prosecuted on our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor for the purpose of overthrowing or interfering with the rights or established institutions of those states, but to defend and maintain the supremacy of the Constitution and all laws made in pursuance thereof, and to preserve the Union with all the dignity, equality and rights of the several states unimpaired; that as soon as these objects are accomplished the war ought to cease.

3. *The Law of* 1861. The act of July 13, 1861, authorized the president, when he should have called out the militia against insurgents claiming, without dispute, to "act under the authority of any state or states," to proclaim the inhabitants of the insurgent states to be in insurrection against the United States; and ordered commercial intercourse with the insurgent states to cease. Accordingly the president issued a proclamation, Aug. 16, declaring the inhabitants of the states which had passed ordinances of secession to be in insurrection.

Section III. Theories of Reconstruction.

As a summary of the changes of theory, we may say that the war was begun under the theory of "restoration," and that this theory was persistently maintained by the Democrats to the end; that the "presidential" theory was developed by Lincoln in 1863, and carried out by Johnson in 1865, but fell back, under the hands of the latter, into a modification of the "restoration" theory; that the Sumner and Stevens theories received no formal ratification from any quarter; but that Congress, having advanced so far as the Davis–Wade plan of 1864, was pressed, by the force of contest with the "presidential" theory, into a plan of its own in 1867, consisting of the Davis–Wade plan increased by the suffrage features of the Sumner theory, and the whole based on a modification of the Stevens theory of a suspension of the Constitution.

Theory 1. *Restoration.* The war began under the influence of the idea that there was "not one of these states in which there were not ample numbers of Union men to maintain a state government after the rebellion shall have been put down." Mr. Pendleton formulated the Democratic view in a statement which is fairly representative. "These acts of secession were either valid or invalid. If they are valid, they separated the state from the Union. If they are invalid, they are void; they have no effect; the state officers who act upon them are rebels to the federal government; the states are not destroyed; their constitutions are not abrogated; their officers are committing illegal acts, for which they are liable to punishment; the states have never left the Union, but

so soon as their officers shall perform their duties, or other officers shall assume their places, will again perform the duties imposed, and enjoy the privileges conferred, by the federal compact, and this, not by virtue of a new ratification of the Constitution, nor a new admission by the federal government, but by virtue of the original ratification, and the constant, uninterrupted maintenance of position in the federal Union since that date. Acts of secession are not invalid to destroy the Union, and yet valid to destroy the state governments and the political privileges of their citizens."

This ground was held thereafter by the Democratic conventions of all the states, and by the national convention of 1868; but it was unsuccessful. Indeed, it was worse. Democratic consistency and persistency thwarted all propositions for mild terms to the insurrectionary states, and drove the opposing party into measures more radical than those which had been defeated.

In the conference at Hampton Roads, February 2, 1865, between Alex. H. Stevens, R. M. T. Hunter, John A. Campbell, President Lincoln, and Secretary Seward, Mr. Stevens says that he asked "what position the confederate states would occupy towards the others if they were then to abandon the war? Would they be admitted to Congress? Mr. Lincoln very promptly replied that his own individual opinion was that they ought to be. He also thought they would be, but he could not enter into any stipulations upon the subject. His own opinion was, that, when resistance ceased and the national authority was recognized, the states would be immediately restored to their practical relations to the Union." This statement, however, is opposed to the known fact that the president was then fairly committed to the "presidential" theory of reconstruction. The last attempt at "restoration" was the memorandum of April 18, 1865, between Generals W. S. Sherman and Joseph E. Johnston. It provided for the disbandment of the confederate forces at their state capitals, the re-establishment of the federal courts, and "the recognition by the executive of the United States of the several state governments, on their officers and legislatures taking the oath prescribed by the Constitution of the United States; and where conflicting state governments have resulted from the war, the legitimacy of all shall be submitted to the supreme court of the United States." The agreement was repudiated by President Johnson, and an unconditional surrender took its place April 26.

2. *The Presidential Theory.* President Lincoln seemed to have held from the beginning, that while as commander-in-chief, he was bound to carry the war into the heart of the seceding states, he was also bound, as civil executive, to endeavor to restore civil relations with the states themselves. His theory is detailed in his proclamation of Dec. 8, 1863, and his defence of it in his annual message of the same date. The presidential program included but four points: cessation of resistance, the appointment of a provisional governor, the taking the oath of amnesty by at least one tenth of the white voters, and the

formation of a republican government; there was no negro suffrage or supervision by congress in it, and the only action of congress was to be the separate decision of the two houses on the admission of members.

It is impossible to see any difference between this and Johnson's "policy." Johnson always maintained that his theory was identical with Lincoln's; and in his speech of Feb. 22, 1866, he asserted that Lincoln had told him, a year before that time, that he was "pretty nearly or quite done with amendments to the Constitution," provided the 13th amendment was ratified. Seward and other intimate friends of Lincoln also declared that the systems were identical. Gen. Grant, in his testimony before the house judiciary committee, July 18, 1867, said that the first of Johnson's reconstruction proclamations (for North Carolina) was the same, and he thought the same *verbatim*, as one which had been read to him twice in a cabinet meeting before Lincoln's assassination. We may safely take the two systems together as the "presidential theory."

So long as slavery was not a point of attack, it is evident that "restoration" and the "presidential theory" were very much the same thing, the only new point in the latter being the exclusion of white voters unable or unwilling to take the oath. In this sense, Virginia was restored or reconstructed *from the beginning*: the Pierpont government was recognized by the president at first as the government of all Virginia, then of the conquered portion of Virgina proper, after the separation of West Virginia, and at the close of the war it superseded the rebellious government of Virginia without objection from any quarter.

A new feature came in with the president's adoption of an anti-slavery policy, September 1862. Thereafter, the presidential theory included the abolition of slavery, and a recognition of the anti-slavery laws and proclamations in the amnesty oath. In other points it remained the same; no legislation by congress, and separate action of the houses on the admission of members.

In this way, Louisiana, Arkansas and Tennessee were reconstructed, (1863–5). The legality of these governments was always stoutly maintained by President Lincoln; but the operation of the presidential theory stopped with the states named. The admission of the Tennessee senators and representatives, July, 1866, was, as will be shown below, the point where the "congressional" theory superseded its predecessor.

Congress adjourned, March 3, 1865, until Dec. 4 following; Lincoln died April 15, 1865; Johnson succeeded to his theory, with far inferior prospects of success. Precedents were in his favor, (i. e. in cases of West Virginia, Virginia, and Louisiana); he was supported by Lincoln's name and cabinet; and above all he had a clear field for eight months before congress could meet. Against him were his unfortunate temper, his inability to temporize, and his controlling sympathy with non-slaveholding southerners. It was certain that, at the first sign of failure in the presidential theory, popular opinion would strike at Johnson far

more willingly than at Lincoln, and that Johnson was far less qualified than Lincoln to meet or evade an attack.

General Johnston surrendered April 26, 1865, and May 29 following, President Johnson began to put into operation the presidential theory, accompanying it with a new amnesty proclamation, such measure being an integral part of the plan. In each state the sequence of events was, (a) the appointment of a provisional governor; (b) the summoning of a convention composed of representatives of the whites able to take the amnesty oath; (c) the adoption of a constitution or ordinances forbidding slavery, repealing or declaring null and void the ordinance of secession, prohibiting persons in the "excepted classes" from voting or holding office, and repudiating the rebel debt; (d) the ratification of these by popular vote; and (e) the election of legislatures, state governments and members of congress. There seems to have been absolutely no check upon the action of the conventions, except the president's proclamations, and telegraphic information from him that their action seemed to him satisfactory or the reverse.

The proclamation in the case of North Carolina, the first in the series, may stand for all. Its preamble recites that the United States guarantee to each state a republican form of government, that the president is bound to take care that the laws be faithfully executed, that the rebellion has deprived the state of all civil government, and that it is now necessary and proper to carry out the guarantee of the United States to North Carolina.

In Mississippi, Georgia and South Carolina, the late governors attempted to convoke the legislatures, and anticipate reconstruction; but the attempts were promptly suppressed by the military commanders. The governments of Virginia, Louisiana, Arkansas and Tennessee were left undisturbed. In all the others the work of reconstruction was so actively carried on during the summer and autumn of 1865, that, when congress met in December, claimants for seats in the house and senate were ready from all the seceding states except Texas. The work of reconstruction was then ended, so far as the presidential theory could carry it; and, as if to clinch and fasten it permanently, Secretary Seward issued his proclamation, Dec. 18, 1865, announcing the ratification of the 13th amendment. In its adoption the ratifications of the legislatures of the seceding states had been essential, and it seemed as if no one could now reject the presidential theory without impugning the validity of the amendment.

3. *The Sumner Theory.* Mr. Sumner offered a series of resolutions in the senate, February 11, 1862, "*declaratory of the relations between the United States and the territory once occupied by certain states.*" The preamble recited the action of the several seceding states, through their governments, in abjuring their duties, renouncing their allegiance, levying war on the government, and forming a new confederacy. The resolutions were nine in number, as follows: 1. that an ordinance of secession is inoperative and void against the Constitution, but is an

abdication, by the state, of its rights under the Constitution, and thenceforward the state, *felo de se*, ceases to exist, and its soil becomes a territory, under the exclusive jurisdiction of congress; 2, that secession is a usurpation, and action under it is without legal support; 3, that the suicide of a state puts an end to any peculiar institution upheld by the state's sole authority; 5, that it is the duty of congress to put a practical as well as a legal end to slavery; 6, that any recognition of slavery is aid and comfort to the rebellion; 7, that it is also a denial of the rights of persons who have been made free; 8, that, as the allegiance of all the inhabitants of the seceding states is still due to the United States, the protection of the United States is equally due to all the inhabitants, regardless of color, class, or previous condition of servitude; 9, that congress will proceed to establish republican forms of government in the "vacated territory," taking care to provide for the protection of *all* the inhabitants.

The essence of the resolutions is the idea of "state suicide"; that no territory can be compelled to assume, and no state can be compelled to retain, the public rights and duties of a state against its will; that "a territory by coming into the Union becomes a state, and a state by going out of the Union becomes a territory." The resolutions were never formally adopted or considered, but their theory remained, and undoubtedly colored, to some extent, the final work of reconstruction.

4. *The Stevens Theory.* Mr. Thaddeus Stevens held that "*the Constitution is suspended in those parts of the country in which resistance to its execution is too strong to be suppressed by peaceful methods.*" He held that the mere fact of resistance suspended the Constitution for the time; that it could not truly be said that the Constitution and laws were in force where they could not be enforced; that the termination of the suspension was to be decided by the victorious party; that, if the rebellion were successful, the suspension would evidently be permanent; and that, if the rebellion were suppressed, the suspension would continue until the law-making and the war-making power should decide that the resistance had been honestly abandoned. Here the theory shaded into the indefinite "war-power." But it differed more than it agreed. Republicans generally held that armies were marching and battles were fought and states were reconstructed throughout the South by virtue of the Constitution and its war power, and they were forced to strain the written instrument into the most extraordinary shapes, and to take lines of action which were radically contradictory. To cite a single example: unless the Pierpont government was the legal government of Virginia in 1861, West Virginia is not and never has been a state of the Union; and yet, if the Pierpont government was legal in time of war, its reconstruction by congress in a time of profound peace was unwarranted by any law. But both these contradictions were accepted. West Virginia was retained as a state, and its members even voted on the reconstruction of the parent state of Virginia. All this, and countless other contradictions, were blotted out by Stevens' all-embracing theory. In his

view, the guarantee clause and the other constitutional grounds of congressional action had no place. Congress had omnipotent power, because the seceding states had repudiated the Constitution. If that body chose to offer mild terms, so much the better for the conquered; if harsh, no one had a right to complain. He persistently advocated harsh terms of peace. In a speech at Lancaster, Pa., (September, 1865,) he proposed *the confiscation* of the estates of rebels worth more than $10,000, or 200 acres of land, 40 acres of land to be given to each freedman, and the balance, estimated at $3,500,000,000 to go toward paying off the national debt. He supposed that only one tenth of the whites would lose their property, while nearly all southern property would be confiscated. This proposition was never formally considered, but it made Stevens the incarnation of all evil in the eyes of southerners. His name and his purposes occur in the debates of all the southern conventions of 1865, and are introduced as incentives to the prompt acceptance of the presidential policy.

5. *The Davis–Wade Plan.* The adoption of an anti-slavery policy during the war made necessary the imposition of some condition on reconstruction; and this condition was first stated in the presidential plan of 1863, in the form of the oath to support the anti-slavery proclamations and laws, as well as the Constitution. But, if any such condition could be imposed, there was practically no limit, in theory, to the conditions which might be imposed; there was no middle ground between unconditional restoration and the discretion of the conquering government. The appearance of a *condition* in the presidential policy was therefore the signal for the appearance of a condition in congress also. In the president's policy no security was asked for the faithful execution of reconstruction, beyond the taking of the oath, the oversight of the president, and the separate action of the houses in admitting members.

To fill this defect, a bill was privately drafted in 1863, reported to congress by the committee on rebellious states, of which Henry Winter Davis and Benjamin F. Wade were the leaders, and came fairly before the house, March 22, 1864. By its terms the president was to appoint provisional governors, who were to enroll the white citizens through the aid of the United States marshals. When a majority of these citizens in any state should take the oath of allegiance, they were to hold a state convention, excluding all confederate office-holders and all who had voluntarily borne arms against the United States, from voting or being delegates. The constitution was to repudiate the rebel debt, abolish slavery, and prohibit the higher military and civil officeholders from voting for or serving as governors or members of the legislature. When this was done the provisional governor was to notify the president; when the assent of congress was obtained the president was to recognize the new government by proclamation, and their senators and representatives were to be admitted. It declared the slaves in seceding states forever free, and made the holding of any such person in slavery an offense

punishable by fine or imprisonment; but there was still no attempt to introduce negro suffrage.

The bill was defended on the ground that "we are now engaged in suppressing a military usurpation of the authority of state governments, and our success will be the overthrow of all semblance of government in the rebel states. The government of the United States will then be the only government existing, in fact, in these states, and it will be charged to guarantee their republican governments. When military opposition shall have been suppressed, not merely paralyzed, then call upon the people to reorganize, in their own way, a republican government in the form that the people of the United States can agree to, subject to the conditions that we think essential to our permanent peace, and to prevent the possible revival of the rebellion." Its basis was therefore the same as that of the final congressional plan—that of a war measure passed, if not *bello flagrante*, at least *bello non cessante*. Its advocates objected to the president's plan for the reason that the latter "proposed no guardianship of the United States over the reorganization of state governments, no law to prescribe who shall vote, no civil functionaries to see that the law is faithfully executed, no supervising authority to control and judge of the elections." These defects the Davis–Wade bill proposed to rectify by the introduction of the local machinery of marshals, and the final authority and assent or rejection of congress. But who or what was to prevent reconstructed governments, after the admission of their senators and representatives, from amending their constitutions and eliminating the conditions of reconstruction? Here was the weak point of the bill, which congress finally endeavored to strengthen in 1867 by negro suffrage and constitutional amendment. The bill passed senate and house but was vetoed by the president on the ground that he had not sufficient time to examine it.

Thus the whole question was still left in suspension, and the war ended with no other preparation for reconstruction than the policy which Lincoln had inaugurated, and Johnson was to carry into general effect.

6. *The Congressional Plan.* The acceptance of the presidential policy by the state conventions of southern whites was so swift that northern Democrats, before the end of July, 1865, generally supported the whole scheme as the best practical form of "restoration," taking the changes in state constitutions as voluntary acts of the states, not as conditions imposed by the president. The resolutions of successive state conventions of 1865 show constant change. *Democratic* resolutions grow steadily stronger in their approval of the presidential policy. *Republican* resolutions grow steadily more reserved in their approval of the president and his policy, and steadily stronger in their approval of "impartial suffrage" as a condition precedent to reconstruction and recognition of seceding state governments.

For this change in the Republican position there were 1st. *party reasons.* Stevens said frankly, in 1867, "White union men are in a minority in each of these states. With them the blacks would act in a

body, form a majority, control the states and protect themselves. It would insure the ascendency of the union party, for I believe, on my conscience, that on the continued ascendency of that party depends the safety of this great nation." But this reason alone, however it might have controlled the policy of the party, could never have made that policy a success; it could never have carried, as it did, the elections of 1866, the very crisis of congressional reconstruction.

The controlling reason will be found, 2nd, *in the constant irritation kept up by the general cast of the legislation in regard to freedmen by the reconstructed legislatures of* 1865–6, supplemented by the indiscreet, unconciliating and inflammatory tone of the president himself.

(For details, vid. Lalor.)

The legislation of the southern states forced a candid observer to conclude, in 1865, that, if they should "get the troops away, and the states into congress, three-fourths of the counties in the state (Georgia) would vote for such a penal code as would practically reduce half the negroes to slavery in less than a year." In the northern states it came to be generally believed that this was the deliberate southern policy; and this belief carried with it a majority ready to support congress in any counteracting policy, however radical.

It is worth remarking that, so far as is known, the actual harm from the laws alluded to was less in reality than in theory. They served nevertheless to irritate the Republicans. There were also other equally effective irritations. Almost the first business of the reconstructed legislatures still existing only under military sufferance, was to pass acts laying special taxes, or setting aside portions of the state's income, for pensioning confederate soldiers, widows and orphans; to pass resolutions demanding the pardon of leading confederates; and to change the names of counties to honor their captured chieftains. In the state conventions, highly injudicious language had been used by a few of the more violent delegates; and, though few of these delegates had been warlike during the war, yet their utterances indicated that at least a defiant tone towards the government was still approved in the South. Further, the peculiar action of the conventions of North Carolina, South Carolina and Georgia, which "repealed" the ordinance of secession instead of declaring it null and void, was imprudent at best. If it is prudent to build a bridge of gold for a flying enemy, it is infinitely more advisable to avoid irritating a victorious enemy who is disposed to be at peace.

Before congress met in December, 1865, the mass of objectionable southern legislation above referred to had fairly taken shape; and, as it seemed to look toward the re-establishment of an *imperium in imperio*, it had already swung the whole republican party into opposition to the presidential policy. The chasm between the president and the majority in congress rapidly grew wider. Feb. 20, 1866, Mr. Stevens introduced a "concurrent resolution concerning the insurrectionary states." Its purport was that *no senator or representative should be admitted by either house until congress should declare the state entitled to*

representation. The house passed the resolution at once. The senate concurred, March 2nd, and *the manner, though not the exact method, of reconstruction, was settled, so far as congress could then settle it.*

June 13th, 1866, the 14th Amendment to the Constitution was offered by congress for the ratification of the states. This may be considered as closing the first stage of reconstruction by congress. The terms now offered to the seceding states were (a) *the ratification of the 14th amendment;* (b) *repudiation of the rebel debt;* (c) *disqualification of specified classes of confederate leaders until they should be pardoned by congress;* (d) *a grant to congress of power to maintain the civil rights of the freedmen.* There was no effort to control suffrage within the state; only an effort to induce the states to grant universal suffrage, and thus increase their representation in congress.

While this perfecting of the first congressional plan was going on, the conflict between the president and congress had gradually become open and bitter. Several important measures had already been passed over the president's veto. Before the adjournment of congress Tennessee was restored to representation by a joint resolution (July 24, 1866) the preamble to which recited that "said state can only be restored to its former political relations in the Union by consent of the *law-making power* of the United States." The president had been so poor a strategist that he had only put himself for the time, outside of the "law making power," which was to do the work of reconstruction. Everything depended on the result of the congressional elections in the autumn (1866), which were to decide whether the two-thirds republican majority in congress would be continued after March 3d following.

As one of the means of preparation for the autumn campaign, the majority of a congressional committe of fifteen presented a report June 18, 1866, with a great mass of testimony to the prevalence of disloyalty in the seceding states. The report asserted that the seceding states in 1860-61 had deliberately abolished their state governments and constitutions, so far as these connected them with the Union, had repudiated the Constitution, and renounced their representation; that as the Constitution acted on individuals, not on states, the people were still bound to obedience to the laws, though they had abolished their state governments; that the war could not be considered as terminated when the people of the seceding states yielded "an unwilling admission of the unwelcome fact" of their inability to resist longer; and that it was an essential condition that such guarantees of future security should be given, as would be satisfactory to the law-making power, which, in the law of 1861, had recognized the existence of rebellion. This, it will be seen, was not quite the theory of either Sumner or Stevens; unlike the former it considered the states as existing, though their governments were in a state of suspended animation; unlike the latter, it maintained the continued existence and force of the Constitution in the seceding states. Practically, however, it agreed with both, in that it made congress the final arbiter of the guarantees of peace.

The president and his supporters had, meanwhile, not been idle. A "national union club" was formed in Washington mainly of the president's republican supporters. Its executive committee issued a call for a national convention to meet at Philadelphia, Aug. 14, 1866, to be composed of northern delegates, representing the Lincoln and Johnson vote of 1864, and of southern delegates who would unite with the former in supporting the presidential policy. The democratic members of congress issued an address approving the proposed convention. The whole movement was well contrived, and nothing but the folly of Johnson himself defeated its design. With the first prospects of success the president's public language became more indiscreet than ever. In his answer to the committee which brought him the Philadelphia resolutions he said: "We have witnessed in one department of the government every effort, as it were, to prevent the restoration of peace and harmony in the Union. We have seen hanging on the verge of the government, as it were, a body called, or which assumes to be, the congress of the United States, but in fact a congress of only part of the states. We have seen this congress assume and pretend to be for the Union, when its every step and act tended to perpetuate dissension, and make a disruption of the states inevitable." His vanity inveigled him into a western tour for campaign purposes—his famous "swinging round the circle." His speeches degenerated into wrangles with mob audiences. These disputes grew more and more disagraceful, yet the president's conceit did not permit him to see that he was making himself and his "policy" ridiculous, and thus playing into the hands of his opponents. When the smoke of the electoral contest had cleared away, it was found that the republican majority had hardly been changed in numbers. In *personnel* the new majority was still more pronounced and united than the old majority in opposition to the presidential policy.

(For account of the New Orleans affair of July 30,1866, vid. Lalor, title Louisiana.)

When congress met in December, 1866, the majority came as victors, not as combatants. Rigor if not vengeance was their policy. Their first terms of June, had been rejected. The defeated party must now accept the additional condition of negro suffrage. This had always been an essential feature of the Sumner and Stevens programmes, but the party majority was now, for the first time, united by the stress of conflict in support of it. The republican caucus at once took place as the practical governing body of the nation. It requested the senate to reject the appointments made by the president for political reasons during the recess, and its executive committee was directed to prepare business for congress. Accordingly several bills were reported and passed practically without debate: e. g.

(1) The act of Jan. 22, 1867, directing congress to meet at noon of March 4.

(2) The act of Feb. 19, directing the clerk of the house to make out the roll of representatives elected to the next congress, including rep-

resentatives from those states alone which were represented in the next preceding congress.

(3) The tenure of office act, limiting the president's power of removal.

(4) The acts establishing universal suffrage, in the District of Columbia, (Jan. 8;) in the territories (Jan. 24;) admission of the state of Nebraska, (Feb. 9.)

(5) The rider to the army appropriation bill, practically making Gen. Grant, instead of the president, the commander-in-chief of the army.

Between October, 1866, and February, 1867, the legislatures of all the seceding states, except Tennessee, rejected the 14th amendment by votes nearly or quite unanimous. This action had a double result:—(a) as a final rejection of the first terms of reconstruction, it made subsequent terms more severe; (b) as it showed the absolute impossibility of obtaining the ratification of the 14th amendment by three-fourths of the (then) thirty-six states, while the southern states remained *in statu quo*, it forced congress to choose between the presidential policy and negro suffrage.

Section IV.—The Reconstruction Bills.

The first reconstruction bill was passed Feb. 20, 1867. It was entitled "An act to provide for the more efficient government of the rebel states." Its preamble recited that no legal state governments, or adequate protection for life and property, now existed in those states, and that it was necessary that peace and good order should be enforced in them until loyal and republican state governments could be legally established. The six sections were as follows:

(1) The states were to be made subject to the military authority of the United States, and divided into five districts.

(2) The president was to appoint the commanding officer of each district, not to be below the rank of brigadier general, and to furnish him sufficient military force.

(3) The commanding officer was "to protect all persons in their rights of person and property, to suppress insurrection, disorder and violence," either by military commission or by allowing local courts to act; "and all interference, under color of state authority, with the exercise of military authority under this act shall be null and void."

(4) Trials were to be without unnecessary delay; punishments not to be cruel or unusual; and sentences of military commissioners were to be approved by the commanding officer, or, if they involved death, by the president.

(5) The people of any state might hold a delegate convention, elected by the male citizens of the state on one year's residence, excluding only those disfranchised for participation in the rebellion, or for felony at common law; but no person excluded from holding office by the proposed 14th amendment was to vote for the delegates or become a dele-

gate. The constitution framed by the convention was to give the elective franchise to those citizens who were allowed to vote for delegates, and was to be ratified by a popular vote under the same conditions of suffrage. When these conditions were fulfilled, the state was to be entitled to representation in congress.

(6) Until thus reconstructed, the civil governments of the rebel states were to be "deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control or supersede the same;" and, "in all elections under such provisional governments," the only voters or officeholders were to be those entitled by this act to vote or hold office.

The bill was vetoed March 2, and passed over the veto the same day. This may be called the second stage of reconstruction. Military government was to be established, but the reconstruction was still to be done by the state, subject to the final approval of congress. In order to *induce* such action by the state, its citizens were given the option of a surrender of civil government, or voluntary reconstruction (Art. 6). It is certain that several states were moving in the direction of voluntary reconstruction when the new congress, which met March 4, 1867, anticipated them and hastened the process.

Supplementary Reconstruction bill. March 19, the new congress passed an act in nine sections as follows: —

(1) Before September 1, 1867, district commanders were to register male citizens qualified to vote under the act, taking from each registered voter an oath that he was qualified by residence and age, and that he had never engaged in rebellion after taking the oath of allegiance as member of any state legislature or of congress, or as an officer, executive or judicial, of the United States or of any state.

(2) The district commander was to hold an election for delegates, equal in number to the lower house of the state legislature, and apportioned according to registration.

(3) The question of holding a convention was to be decided at the same election.

(4) If a majority of registered voters consent to the convention, the district commander was to give the delegates sixty days' notice of the time and place of meeting; and when the constitution was framed, he was to give thirty days' notice of an election to ratify or reject it.

(5) When the constitution was ratified, it was to be sent to the president, and by him sent to congress. If congress approved it as in conformity with the reconstruction acts, the state was to be declared entitled to representation, and her senators and representatives were to be admitted.

(6) All elections were to be by ballot, and false swearing was to be punished as perjury.

(7) The expenses of the commanding officer were provided for.

(8) The convention in each state was to have the power of taxation for its own expenses.

(9) A verbal mistake in the original act was corrected.

This may be called the third stage of reconstruction by congress. Its essential point of difference was that the work of reconstruction was now taken out of the hands of the state, and given to the military commander. In brief, it was, so far as the state was concerned, *involuntary* reconstruction.

Section V. The Work of Reconstruction.

March 11, 1867, the president appointed the district commanders—Generals Schofield, Sickles, Thomas, Ord and Sheridan. General Pope relieved Thomas, March 15. The usual order of procedure in the districts was: (a) publication of the assumption of command; (b) direction to the "officers under the existing provisional government" of the state to perform their duties as usual until the department issued orders to the contrary; (c) notice that whipping and maiming in punishment of crime must cease, and that the militia must be disbanded; (d) appointment of boards of registration and notification of the test oath; (e) election of delegates; (f) meeting of the convention, and framing of the state constitution.

The machinery worked with comparative smoothness. Any opposition by state officials was met with prompt removal. In all the states the local work of reconstruction went on rapidly. The first of the conventions, in Alabama, met Nov. 5, 1867, and the others followed at various intervals. The constitutions agreed in: (a) abolishing slavery; (b) repudiating the rebel debt; (c) *renouncing the claim of a right to secede;* (d) *declaring the ordinance of secession null and void;* (e) giving the right of suffrage to all male citizens over twenty-one years of age, on a residence qualification; (f) prohibiting the passage of laws to abridge the privileges of any class of citizens; (g) disfranchising all who were disqualified from holding office by the (proposed) 14th amendment. (North Carolina, Georgia and Florida constitutions did not contain (g).)

This last clause (g) caused the rejection of the constitution in Mississippi, while in Texas and Virginia the popular sentiment was so adverse that no submission to popular vote was ventured on as yet. In the other states, legislatures and governors were rapidly elected. The former ratified the 14th amendment; the latter were formally appointed military governors until reconstruction could be completed. Admission was granted by congress to Arkansas, June 22, 1868; to North Carolina, South Carolina, Georgia, Florida, Alabama and Louisiana, June 25th. The condition imposed by the congressional act was that the grant of universal suffrage should never be revoked. July 20, 1868, an act to exclude electoral votes from unreconstructed states was passed over the veto.

The 14th amendment thus secured the requisite number of state ratifications, and an act of June 25, 1868, directed the president to announce the fact by proclamation. Johnson complied in a formal and

perfunctory manner by issuing a manifesto which meant that the executive did not regard the ratification as valid. In the presidential election of 1868 the two parties took opposite grounds on this issue. The republican platform *congratulated the country on the assured success of the reconstruction policy of congress.* The democratic platform, while it recognized the questions of slavery and secession as settled by the war, declared "*the reconstruction acts (so called) of congress to be usurpations and unconstitutional, revolutionary and void.*" The country emphatically endorsed the republican position in the congressional elections of 1868.

The supreme court on reconstruction. Much uneasiness had been felt by congressional leaders as to the action which the supreme court would take if the constitutionality of reconstruction should come legitimately before it. In December 1868, the case of Texas vs. White raised the question; and the court decided in favor of congress. During the rebellion, Texas had sold a number of the bonds given her by the United States in 1850, and the new state government sought an injunction to prevent payment to the purchasers. As Texas was still unreconstructed, the court agreed, that, *if she were not a state*, the suit must be dismissed, so that the whole suit turned on this point. The court held (a) that the Union was "*an indestructible Union of indestructible states*"; (b) that ordinances of secession were null and void, but that the states which passed them did not cease to be states of the Union; (c) that their own act of rebellion had suspended their governmental relations to the United States; (d) that congress must decide, as in the case of the Dorr rebellion in Rhode Island, (1840–42,) what government is established, before it can decide whether it is republican or not; (e) that reconstruction by congress was valid, and that the governments instituted by the president were provisional only, to continue until congress could act in the premises.

This was not the Sumner nor the Stevens, but the congressional theory. It is fully summed up in an opinion of attorney general E. R. Hoar, (May 31, 1869.) "The same authority which recognized the existence of the war is the only authority having the constitutional right to determine when, for all purposes, the war has ceased. The act of March 2, 1867, was a legislative declaration that the war which sprang from the rebellion was not, to all intents and purposes, ended: and that it should be held to continue until state governments, republican in form, and subordinate to the Constitution and laws, should be established." It is, therefore, not correct to say that the precedents of reconstruction give congress the right to reconstruct any state government at pleasure. Such a reconstruction can only come *as the result of a rebellion recognized as such by the national authority, and ending in the overthrow of the state government with the rebellion.* (Vid. case of Maryland: Feb. 27, 1867.)

In Texas, Mississippi, and Virginia, reconstruction was not yet accomplished. The act of April 10, 1869, accordingly authorized the president to call elections in those states for the ratification or rejection of their new state constitutions, submitting such sections as he pleased to a sep-

arate vote; but, as penalty for delay, the new legislatures were required to ratify the proposed 15th as well as the 14th amendment. This may be considered the fourth and final stage of reconstruction by congress. The conditions having been fulfilled, the tardy states were admitted as follows——Virginia, January 26; Mississippi, February 23; Texas, March 30, 1870. In the same year, however, an attempted evasion of conditions by Georgia brought her into the same position as the three states last named; and it was not until January 30, 1871, that all the states were represented in both houses of congress, for the first time since 1860.

(On the *failures* of reconstruction, vid. Lalor, in loco.)

Section VI.—The Successes of Reconstruction.

For proof that reconstruction was, in one essential particular, a success, it is only necessary to contrast the pseudo-legal measures against the freedmen by southern negro haters in 1866–7, with the infinitely milder and more equitable legislation of 1869–77. This latter body of laws gave the freedmen a status as men, which if not altogether satisfactory, is doubtless far more advantageous than they could have gained under the simple restoration policy. If the ballot is a nullity to the negro, his other rights are not; and he owes this to reconstruction. Further, the ballot itself will not always be a nullity. There stands the unchangeable organic law of the states, waiting for the time when the negro shall be ready for the right of suffrage; and we may be sure that the recognition of his readiness will come far sooner and more easily by reason of the fact that it has nothing to fight against in the state constitutions.

We have noticed, also, the portentous reappearance of the seceding states, after their reconstruction by the president, as an *imperium in imperio*. It would have been an impossibility for southern representatives under that regime, however honest their intentions, to divest themselves suddenly of the prejudices and the traditions of a lifetime's training, and come back in full sympathy with the economic laws which were thenceforth to attach to their own sections as well as to the rest of the country. They must, then, have returned as a solid phalanx of irreconcilables, sure of their ground at home, and a permanent source of irritation, sectional strife, and positve danger to the rest of the country. All this was ended by reconstruction. This process gave the southern whites enough to attend to at home, until a new generation should grow up with more sympathy for the new, and less for the old. The energies which might have endangered the national peace were drawn off to a permanent local struggle for good government and security of property. Whatever may be alleged on humanitarian grounds against a policy

which for a time converted some of the states into political hells, it must be judged as the solution of one of the most intricate problems of modern history, and, in the absence of demonstration that any other practicable plan would have secured greater good to the greatest number, the policy must be approved.